TRANSCRIPT OF

SUPREME COURT OF THE

OCTOBER TERM

No. 243.

HAVEMEYERS AND ELDER SUGAR
PANY, PLAINTIFF IN ERROR,

vs.

DANIEL MAGONE, COLLECTOR OF THE
YORK.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED
SOUTHERN DISTRICT OF NEW YORK.

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PHILADELPHIA
—OF—
LAW ASSOCIATION

(14,765.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1894.

No. 243.

HAVEMEYERS AND ELDER SUGAR REFINING COMPANY, PLAINTIFF IN ERROR,

vs.

DANIEL MAGONE, COLLECTOR OF THE PORT OF NEW YORK.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

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1 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the circuit court of the United States for the southern district of New York, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you or some of you, between Havemeyers & Elder Sugar Refining Company, plaintiff, and Daniel Magone, defendant, a manifest error hath happened, to the great damage of the said plaintiff, as is said and appears by its complaint, we, being willing that such error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the justices of the Supreme Court of the United States, at the Capitol, in the city of Washington, together with this writ, so that you have the same at the said place, before the justices aforesaid, on the 23rd day of July next, that, the record and proceedings aforesaid being inspected, the said justices of the Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 25th day of June, in the year of our Lord one thousand eight hundred and ninety-one, and of the Independence of the United States the one hundred and fifteenth.

Seal of U. S. Circuit Court, South. Dist. New York.

JOHN A. SHIELDS,
Clerk of the Circuit Court of the United States of America for the Southern District of New York, in the Second Circuit.

The foregoing writ is hereby allowed.

E. HENRY LACOMBE.

2 [Endorsed:] E. & A. B. 1010. 13626. Supreme Court of the United States. Havemeyers & Elder Sugar Refining Company, plaintiff in error, *vs.* Daniel Magone, defendant in error. Writ of error. Stanley, Clarke & Smith, attorneys for plaintiff in error. Due service of a copy of the within writ of error is hereby admitted this 25th day of June, 1891. Edward Mitchell, U. S. att'y & attorney for defendant in error. P. 1.45, ch. U. S. circuit court. Filed Jun- 25, 1891. John A. Shields, clerk.

UNITED STATES OF AMERICA, *Southern District of New York,* } *ss:*

I, John A. Shields, clerk of the circuit court of the United States of America for the southern district of New York, in the second cir-

cuit, by virtue of the foregoing writ of error and in obedience thereto, do hereby certify that the following pages, numbered from three to one hundred forty-one, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the cause of Havemeyers & Elder Sugar Refining Company, plaintiff in error, against Daniel Magone, defendant in error, as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this twenty-first day of July, in the year of our Lord one thousand eight hundred and ninety-one, and of the Independence of the United States the one hundred and sixteenth.

Seal of U. S. Circuit Court, South. Dist. New York.

JOHN A. SHIELDS, *Clerk.*

3 Superior Court of the City of New York.

HAVEMEYERS & ELDER SUGAR REFINING COMPANY, Plaintiffs, *against* DANIEL MAGONE, Defendant. } Summons.

To the above-named defendant, Daniel Magone:

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer on the plaintiffs' attorney within twenty days after the service of this summons, exclusive of the day of service, and in case of your failure to appear or answer judgment will be taken against you by default for the relief demanded in the complaint.

Dated New York, Feb. 12, 1889.

ISAAC PHILLIPS,
Plaintiffs' Attorney.

Office & post-office address: No. 59 Liberty street, New York city.

Endorsed: N. S. 13626. Superior court of the city of New York. Haveneyers & Elder Sugar Refining Company against Daniel Magone. Summons. Isaac Phillips, plaintiffs' attorney, 59 Liberty St., New York. To Daniel Magone, Esq., collector, &c. Personally served Feb. 12, 1889, custom-house, New York. Received U. S. attorney's office Feb. 14, 1889.

4 The President of the United States of America to the judges of the superior court of the city of New York, Greeting:

[L. S.] We, for certain reasons, being desirous that our circuit court of the United States for the southern district of New York, in the second circuit, shall be certified of a certain cause commenced before you against Daniel Magone, defendant, by Haver-

meyers & Elder Sugar Refining Company, plaintiffs, do therefore command you that the record and proceedings in the said cause you distinctly and openly send to the said circuit court, at the city of New York, on the 28th day of February, 1889, as fully and amply as the same are remaining before you, by whatever names the said parties may be called therein, together with this writ, that our said court may cause to be further done thereupon what of right ought to be done.

Witness Hon. Samuel F. Miller, senior associate justice of the Supreme Court of the United States, the 25th day of Feb., in the year one thousand eight hundred and eighty-nine.

JOHN A. SHIELDS, *Clerk.*

STEPHEN A. WALKER,
United States Attorney, Attorney for Defendant.

5 Endorsed: 13626. U. S. circuit court. Havemeyers & Elder Sugar Refining Company *vs.* Daniel Magone. Copy certiorari. Stephen A. Walker, U. S. attorney, attorney for defendant. Take notice that the within is a copy of a certiorari this day issued out of the circuit court of the United States for the southern district of New York. New York, Feb. 25, 1889. Yours, Stephen A. Walker, U. S. attorney, attorney for defendant. To I. P., plaintiffs' attorney. Due service of a copy of the within and of the above notice is hereby admitted. New York, Feb. 25, 1889. Isaac Phillips, plaintiffs' attorney.

6 Circuit Court of the United States for the Southern District of New York.

HAVEMEYERS & ELDER SUGAR REFINING COMPANY, Plaintiffs, *against* DANIEL MAGONE, Defendant.	N. S. 13626. Complaint.

Plaintiffs complain:

1st. That defendant was during the times hereinafter named collector of customs of the United States at the port of New York.

2d. That plaintiffs were during said times in trade under the corporate name of Havemeyers & Elder Sugar Refining Co., and as such duly imported and entered at the port of New York the goods described in the bill of particulars annexed.

3d. The defendant, as such collector, exacted from plaintiffs as and for duties thereon, and plaintiffs in order to obtain such and the said goods were compelled to pay and did pay, the sum of sixty-seven thousand eight hundred and twenty-four and $\frac{23}{100}$ dollars in excess of the amount required by law.

4th. That by the laws of the United States the true duty upon said goods was at the amount of sixty-seven thousand eight hundred and twenty-four dollars and twenty-three cents less than demanded by the collector, but plaintiffs, in order to obtain said goods, were

compelled to pay the defendant, as such collector, the said
7 sum of sixty-seven thousand eight hundred and twenty-four $\frac{23}{100}$ dollars in gold coin of the United States in excess of any amount required by law.

5th. That plaintiffs filed with said defendant due and timely protests in writing upon each entry of said goods against his decision exacting such duty, setting forth distinctly and specifically the grounds of objection thereto and also as above stated.

6th. That plaintiff made due and timely appeals in each case to the Secretary of the Treasury, who has affirmed the decision of defendant as to certain of said entries and as to the rest of said entries has neglected to answer said appeals, and more than ninety days had elapsed since said unanswered appeals when this action was commenced.

7th. That the bill of particulars hereto annexed states for each importation separately the date of entry at the custom-house, of the payment of duty in excess, of the filing of the said protests, of the appeal to the Secretary of the Treasury and of his decision thereon, together with the other particulars required by law, and is made a part hereof.

8th. That said sum so exacted as aforesaid has never been repaid to plaintiffs and is still due and owing to them.

Wherefore plaintiffs demand judgment against defendant for sixty-seven thousand eight hundred and twenty-four $\frac{23}{100}$ dollars in
United States gold coin, with interest on the several sums
8 named in the bill of particulars from the several dates of payment as appear thereby, together with costs and disbursements of this action.

ISAAC PHILLIPS,
Attorney for Plaintiffs.

Endorsed: N. S. 13626. United States circuit court. Havermeyers & Elder Sugar Refining Company against Daniel Magone. Complaint. Due service of a copy hereof is hereby acknowledged this 26th day of Feb'y, 1889. Isaac Phillips, pl'ff's' attorney, 59 Liberty street, New York city. Received U. S. attorney's office Feb. 26, 1889.

Bill of Particulars.

9 & 10

Imported by Messrs. Havemeyers and Elder Sugar Refining Company. Suit commenced 12th Feb'y, 1889.

Name of importer.	Description of merchandise.	Whence imported	Name of vessel.	Date of invoice.	Date of entry at custom-house.	Date of payment of duties.	Amount of excess claimed.	Protest filed.	Date of appeal to Secretary of the Treasury.	Date of Secretary's decision of appeal.	Date of liquidation.
				1888.	'88	1888.		1888.	1888.	1888.	1888.
Havemeyer and Elder Sugar Refining Co.	Ex. 1. Sugar....	Havana.....	Saratoga.....	July 2 & 5...	July 11	July 11 ..... Aug. 7.....	$721 60	9427—Aug. 6	Aug. 6	Nov. 20	Aug. 1
	2. " ...	"	Mexico	" 3.	" 10	July 10..... Aug. 7	509	9429— " "	" "	" "	July 30
	3. " ...	Matanzas.....	Wensleydale.....	" 18 & 20..	June 26	June 26.....	281 98	9502— " 8	" 8	" "	" "
	4. " ...	Manzanilla.....	J. F. Whitney	May 4	" 9	" 9.....	780 32	9503— " "	" "	" "	Aug. 2
	5. " ...	Havana.....	John E. Chase.....	" 26	" 27	" 27..... Aug. 10.....	616 75	9559— " 9	" 9	" "	" 3
	6. " ...	Matanzas.....	Olive Thurlow.....	July 11.....	July 27	Oct. 8.....	719 54	10633— " 29	" 29	" "	" 24
										1889.	
	7. " ...	Havana.....	Antonia Sala.....	June 27	" 9	July 10 & 30....	998 77	9325— " 3	" 3	Jan. 8	July 26
	8. "	Havana.....		" 6, 13,							
	9. "	Cardenas.....	Arecebo.....	& 15.	June 22	Sept. 15, 19, & 21.	1,893 47	9639— " 10	" 10	" "	Aug. 8
		Carbarien.....		" 11							
	10. " ...	Barbadoes.....	G. M. Stanwood.....	" 14 & 19	July 6	July 6.....	376	9696— " 11	" 11	" "	" "
	11. " ...	St. John, P. R	Fido.....	" 11	" 11	" 11.....	844 43	9981— " 17	" 17	" "	" 13
	12. " ...	Guantanamo	Frederico.....	May 23 & 30	" 16	" 20..... Aug. 22	468	10146— " 20	" 20	" "	" 16
	13. " ...	Cienfuegos..	Asturiana	June 5.....	June 13	June 13 & 15...	671 28	10236— " 22	" 22	" "	" 18
	14. " ...	Havana.....	Josephine	July 3.....	July 17	July 17.....	427	10573— " 28	" 28	" "	" 21
	15. " ...	Barbadoes.....	Anna.....	" 18	Aug. 7	Aug. 7.....	857 31	10787— " 31	" 31	" "	" 28
	16. " ...	Havana.....	City of Washington	Aug. 4.....	" 9	" 9.....	1,624	11352—Sept. 13	Sept. 13	" "	Sept. 4
	17. " ...	Sagua la Grande..	Queen.....	July 4.....	July 11	July 11, 12, & 14	885 15	9638—Aug. 10	Aug. 10	" "	Aug. 4
	18. " ...	Havana.....	Panama.....	" 14.....	" 19	" 23..... Sept. 5	480 76	10783— " 31	" 31	" "	" 27
	19. " ...	"	Saratoga.....	Aug. 11..	Aug. 16	Aug. 16 & 30....	703 57	11784— " "	" "	" "	" 28
	20. " ...	Matanzas.....	Miguel M. Pinellos..	July 12 & 13	July 18	July 19, 20, & 21. Sept. 5.....	3,743 91	10785— " "	" "	" "	" 27
	21. " ...	"	I. W. Dresser	" 24.....	Aug. 10	Aug. 10 & 30....	980 87	10786— " "	" "	" "	" 28
	22. " ...	Cardenas.....	Camellia	Aug. 1 & 4....	" 13	" 13	1,750	11079—Sept. 6	Sept. 6	" "	" 30
	23. " ...	Cardenas.....	City of Columbia.....	" 7 & 9	" 1	Aug. 15.....	362 39	11081— " "	" "	" "	" 29
	24. " ...	Havana			" 15						
	25. " ...	Havana.....	Panama	" 3.....	" 9	" 9..... Sept. 13.....	1,798 40	11353— " 13	" 13	" "	Sept. 7
	26. "	Havana.....	Charles Purvis....	July 18.....	" 18	Aug. 18.....	684 72	11405— " 14	" 14	" "	" 8
		Sagua la Grande		Aug. 4.....							
	27. " ...	Havana.....	John R. Bergen	" 7 & 20..	" 20	" 20.....	191 49	11622— " 19	" 19	" "	" 13
	28. " ...	"	Mexico.....	July 24.....	July 30	July 30.....	1,475 32	11623— " "	" "	" "	" 11

DANIEL MAGONE, COLLECTOR, ETC. 5

Bill of Particulars—Continued.

Name of importer.		Description of merchandise.	Whence imported.	Name of vessel.	Date of invoice.	Date of entry at custom-house.	Date of payment of duties.	Amount of excess claimed.	Protest filed.	Date of appeal to Secretary of the Treasury.	Date of Secretary's decision of appeal.	Date of liquidation.
					1888.	'88.	1888.		1888.	1888.	1889.	1888.
	Ex. 29.	Sugar....	Havana.....	Mexico.....	Aug. 11.....	Aug. 20	Aug. 23..... / Sept. 28.....	$2,723 71	11940—Sept. 25	Sept. 25	Jan. 8	Sept. 20
	30.	" ...	"	Ponce de Leon	" 21.....	" 29	Aug. 29 & 31... / Oct. 2.....	9,314 55	12310—Oct. 1	Oct. 1	" "	" 25
11	31.	" ...	Liverpool	City of Chicago	" 21 & 22	Sep. 3	Sept. 10 ..... / Oct. 8 ..... / July 30	476 99	12533— " 5	" 5	" "	" 29
Havemeyer and Elder Sugar Refining Company.	Ex. 32.	Sugar....	Cardenas	Galley.....	Sept. 7.....	July 24	Aug. 13, 16, & 21 / " 30.....	1,157 19	11080—Sept. 6	Sept. 6	Jan'y 8	Aug. 29
	33.	" ...	Liverpool.....	City of Chester.....	Aug. 15 & 18	Aug 25	Oct. 11.....	474 65	12819—Oct. 10	Oct. 10	" "	Oct. 3
	34.	" ...	Havana.....	Niagara.....	July 7, 9, & 12	July 19	July 19 ..... / Sept. 28.....	860 45	11971—Sept. 25	Sept. 25	" "	Sept. 20
	35.	" ...	Havana..... / Cardenas.....	Gaditano.....	Aug. 8 & 13	Aug. 20	Aug. 20 & 22... / Octo. 29	7,396 84	13745—Oct. 27	Oct. 27	" "	Oct. 23
		"	Havana.....	Wandering Jew.....	June 5 & 6	June 22	June 22..... / Aug. 7.....	889	9428—Aug. 6	Aug. 6	" "	Aug. 1
	36.	" ...	Guantanamo.....	Benita.....	Aug. 25	Sept. 4	Sept. 4.....	2,601 19	12310—Oct. 1	Oct. 1	" "	Sept. 26
	37.	" ...	Havana.....	Mexico.....	Sept. 3.....	" 10	" " 10..... / Oct. 2.....	2,276 68	12311— " "	" "	" "	" 24
	38.	" ...	St. Iagode, Cuba...	Raskoa.....	Aug. 4 & 11	" 4	Sept. 4 & 28.....	556 68	12312— " "	" "	" "	" "
	39.	" ...	Arececibo, P. R.....	Cameratee.....	" 4, 8, & 10	" 26	Sept. 26.....	782 82	13122— " 16	" 16	" "	Oct. 11
	40.	" ...	Cienfuegos.....	Claribel	" 22.....	" 13	Sept. 10.....	117 88	13670— " 26	" 26	" "	" 22
	41.	" ...	Liverpool.....	The Queen	" 18.....	Aug. 30	Sept. 4.....	1,344 45	12877— " 11	" 11	" "	" 6
		"	Various ports ... / Porto Rico.....	Sandringham.....	" 25, 28, & 29 / Sept 3 & 4	Sept. 13	Sept. 13.....	759 03	12878— " "	" "	" "	" 5
	42.	" ...	Havana.....	Saratoga.....	Sept. 15.....	" 20	Sept. 20.....	572 42	13567— " 24	" 24	" "	" 17
	43.	" ...	Hamburg	Rembrandt.....	Aug. 24.....	" 15	Oct. 2.....	453 32	13671— " 26	" 26	" "	" 19
	44.	" ...	Hamburg	Amy Dora.....	Sept. 7.....	Oct. 2	Oct. 8.....	150 17	13816— " 29	" 29	" "	" 24
	45.	" ...	Liverpool	St. Oswald	" 21.....	" 5	" 6 & 9.....	5,537 03	13895— " 31	" 31	" "	" 26
	46.	" ...	Havana.....	City of Columbia....	Oct. 9 & 10...	" 15	" 15.....	1,709 35	1405—Nov. 3	Nov. 3	" "	" 29
	47.	" ...	Liverpool	England	Sept. 4	Sept. 21	Sept. 21.....	414 40	14266— " 8	" 8	" "	Nov. 3
	48.	" ...	Hamburg	Rhætia	Sept. 3 & 4 ..	" 19	" 28.....	235 28	14347— " 9	" 9	" "	Oct. 31
	49.	" ...	Cardenas.....	Laurestina.....	June 8, 11, & 19	June 28	June 29 & 30.. / July 3.....	585 29	11625—Sept. 19	Sept. 19	" "	Sept. 12
	50.	" ...	Hamburg	Moravia	Sept. 15.....	Oct. 1	Oct. 6.....	261 45	13955—Nov. 1	Nov. 1	" "	Oct. 26
	51.	" ...	Hamburg.....	California	Aug. 28	Sept. 13	" "	217 56	14627— " 15	" 15	" "	Nov. 9
								$67,824 23				

12 [Endorsed:] N. S. 13626. U. S. circuit court, southern district of New York. Havemeyers & Elder Sugar Refining Co. against Daniel Magone, collector, &c. Bill of particulars. Isaac Phillips, plaintiffs' attorney. Due service of copy of within bill of particulars and notice is hereby admitted. New York, Feb. 26, 1889. U. S. attorney's office. Received Feb. 26, 1889.

U. S. Circuit Court.

HAVEMEYERS & ELDER SUGAR REFINING CO.
against
DANIEL MAGONE.

NEW YORK, *Feb'y 26th*, 1889.

SIR: Please take notice that the *following* or within is a bill of particulars of the plaintiffs' demand in this action, which is brought to recover money erroneously and illegally exacted of and from the plaintiffs by the defendant as collector of customs at the port of New York and as for duties on merchandise imported in the vessels and at the dates specified in said bill of particulars, to which add legal interest on the amounts from the date of payment as aforesaid.

Yours, &c.,

ISAAC PHILLIPS,
Plaintiffs' Attorney.

To Stephen A. Walker, Esq., defendant's attorney.

13 Circuit Court of the United States for the Southern District of New York.

HAVEMEYERS & ELDER SUGAR REFINING COMPANY
versus
DANIEL MAGONE, Collector, &c.
N. S. 13626.

The defendant answers to the complaint as follows:

I. He denies that the true duty or that the true and lawful rate of duty on the goods referred to in the complaint was as stated in the complaint, and he denies that the plaintiff was compelled to pay or did pay to the defendant, as collector or otherwise, the sum stated in the complaint or any sum in excess of the amount required by law as duties upon the said goods, or that any sum of money unauthorized by law was exacted as duties on said goods or otherwise, or that the same was paid in order to obtain possession of said goods.

II. He denies that the plaintiff filed with the defendant any protest or protests as required by section 3011 of the Revised Statutes of the United States.

III. He denies that the sum stated in the complaint or any sum is now due and owing the plaintiff.

IV. He denies that he has any knowledge or information suffi-

cient to form a belief as to whether the goods alleged in the
14 complaint to have been imported at the time therein mentioned were in fact such goods as are described in the said complaint.

V. And, further answering, he alleges that no protest was filed within ten days after the ascertainment and liquidation of the duties thereon.

VI. And, further answering, he alleges that no appeal was taken to the Secretary of the Treasury within thirty days after the date of the ascertainment and liquidation of duties thereon.

VII. And, further answering, he alleges that this action was not brought within ninety days after the decision of the Secretary of the Treasury on the appeal taken from the ascertainment and liquidation of duties thereon or within ninety days after payment of duties paid thereon after such decision.

VIII. And, further answering, he alleges that this action was brought without the decision of the Secretary of the Treasury on the appeal from the ascertainment and liquidation of duties thereon having been first had and without ninety days having elapsed from the date of such appeal.

IX. And, further answering, the defendant alleges that all moneys received by him from the plaintiff in respect of the importations in the complaint alleged to have been made were demanded of the plaintiff and were by the plaintiff voluntarily paid to him in his capacity as collector of customs as and for duties due the United States on imported merchandise, and were forthwith before the commencement of this action and before the receipt by de-
15 fendant of any protest or objection on the part of the plaintiff paid over by the defendant in his official capacity aforesaid to the United States and placed beyond his control.

X. And, further answering, the defendant alleges that all moneys received by him from the plaintiff in respect of the importations in the complaint alleged to have been made were sums due from the plaintiff to the United States as duties according to the rate of duty imposed by law upon articles of merchandise imported by plaintiff and assessed with duty, and no other sums than duties regularly assessed and ascertained and liquidated according to law upon the plaintiff's entry thereof were collected or received by defendant from the plaintiff.

Wherefore defendant demands judgment that the complaint be dismissed with costs.

STEPHEN A. WALKER,
United States Attorney, Attorney for the Defendant.

Endorsed: 13626. U. S. circuit court, southern district of New York. Havemeyers & Elder Sugar Ref'g Co. *vs.* Daniel Magone, collector, etc. Copy answer. Stephen A. Walker, United States attorney, attorney for defendant. Sir: Please to take notice that the within is a copy of an answer this day filed in the office of the clerk of the circuit court of the United States for the southern district of New York. Dated New York, June 12th, 1889. Yours, &c., Ste-

phen A. Walker, U. S. att'y & att'y for def't. To Isaac Phillips, Esq., attorney for plaintiff. Isaac Phillips, per Herman S. Phillips.

16 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court-rooms, in the city of New York, on Wednesday, the 4th day of February, in the year of our Lord one thousand eight hundred and ninety-one.

Present: The Honorable E. Henry Lacombe, circuit judge.

THE HAVEMEYER & ELDER SUGAR REFINING CO. *vs.* DANIEL MAGONE. } N. S. 13626.

Now comes the plaintiff, by Stephen G. Clarke, Esq., its attorney.

Likewise comes the defendant, by Charles D. Baker, Esq., assistant United States attorney, his attorney.

Thereupon a jury is empanelled and the cause proceeds to trial.

After hearing the evidence of the plaintiff and the argument of counsel for the respective parties, the jury, on the 6th inst., by direction of the court, say that they find a verdict for the defendant, and so they say all.

On motion of Edwin B. Smith, Esq., ordered that the plaintiff have a stay of sixty days in which to make and serve a case with leave to turn the same into a bill of exceptions.

An abstract of the minutes.

[SEAL.] JOHN A. SHIELDS, *Clerk.*

17 United States Circuit Court, Southern District of New York.

HAVEMEYERS & ELDER SUGAR REFINING COMPANY *vs.* DANIEL MAGONE. } Judgment, June 25th, 1891.

The issues in this action having been brought on for trial before Mr. Judge E. Henry Lacombe and a jury, at a circuit court of the October term, 1890, and the issues having been tried and a verdict for the defendant having been duly rendered on the 6th day of Feb'y, 1891, and his costs having been adjudged at $48.85—

Now, on motion of Edward Mitchell, United States attorney for defendant—

It is adjudged that the defendant have judgment against the plaintiff upon the issues in this action, and that he recover the sum of $48.85, his taxed costs, and have execution therefor.

Judgment signed this 25th day of June, 1891.

JOHN A. SHIELDS, *Clerk.*

Endorsed: N. S. 13626. United States circuit court. Havemeyer & Elder Sugar Refining Company *vs.* Daniel Magone Judgment-roll. Edward Mitchell, United States attorney, attorney for defendant. U. S. circuit court. Filed June 25, 1891, 4 p. m. John A. Shields, clerk.

18 U. S. Circuit Court, Southern District of New York.

HAVEMEYERS & ELDER SUGAR REFINING COMPANY *against* DANIEL MAGONE. } Plaintiffs' Bill of Exceptions.

This cause came on for trial before his honor Judge Lacombe and a jury on the 4th day of February, 1891, and the plaintiffs' counsel to sustain the issues on their part proved—

That they were a corporation duly incorporated under the laws of the State of New York and in the year 1888 and imported and entered at the port of New York cargoes of sugar in the bill of particulars referred to at the dates therein stated, the invoices and entries of which importations were read in evidence, each invoice containing sugars below No. 13, Dutch standard, either in bags or hogsheads or tierces.

That the collector exacted a rate and amount of duty on said importations which were not above No. 13, Dutch standard, in color in excess of the amount which would be due on a calculation based on that polariscopic test of said sugar, which was stated by the plaintiffs on their entries; that the plaintiffs seasonably filed their protests and appealed to the Secretary against said exactions and commenced this action in due time to recover such payments and exactions back and complied with all requirements necessary

19 to enable them so to do, provided said exactions were illegal.

That the plaintiffs made on all the custom-house entries of such sugars as were not above No. 13, Dutch standard, a statement of the polariscopic test thereof as claimed by them, which statements were required to be made by the collector before the entry would be received, and in pursuance of Treasury regulations dated May 6, 1886, of which the following is a copy:

"TREASURY DEPARTMENT, *May* 6, 1886.

Upon entry of sugars, collectors of customs will require the importer to specify in his entry the kind of sugars and, approximately, their polariscopic test, and duties will be estimated accordingly. Centrifugal sugars will be regarded as testing not less than ninety-five degrees.

C. S. FAIRCHILD,
Acting Secretary.

To collectors and other officers of the customs."

That the sugars by the Aricebo were entered on the 21st of June, 1888, and on the 23rd a letter, of which the following is a copy, was sent by the collector to the surveyor of the port:

"CUSTOM-HOUSE, NEW YORK CITY,
COLLECTOR'S OFFICE, *June* 23, 1888.

Hon. H. S. Beattie, surveyor, etc.

SIR: It was called to my attention this morning that the steamship Arecibo is discharging a cargo of sugar at Watson's stores,

Brooklyn, and I am also informed that the sugar was taken on at several different ports and is the manufacture of several different producers. It is particularly important that this cargo of sugar should be separated according to the several brands it may bear. Please see to it that this request is carried out.

Respectfully yours, D. MAGONE, *Collector.*"

That on the 28th of June, 1888, the sugars by the Laurestina were entered, and on the 3d of July a letter, of which the following is a copy, was received by the surveyor from the collector:

20

"CUSTOM-HOUSE, NEW YORK CITY,
COLLECTOR'S OFFICE, *July* 3, 1888.

Hon. H. S. Beattie, surveyor, etc.

SIR: It has been called to my attention this morning that the steamship Lauristina is discharging a cargo of sugar at Havemeyer & Elder's dock, and I am also informed that the sugar was taken on at several different ports and is the manufacture of several different producers. It is particularly important that this cargo of sugar should be separated according to the several brands it may bear. This is a similar case to that of the S. S. Arecibo, of which I wrote you on the 23rd of June, and the matter should receive prompt attention.

Respectfully yours, CHAS. P. McCLELLAND,
Special Deputy Collector."

That on the 5th of July the following letter was received by the surveyor from the collector:

"CUSTOM-HOUSE, NEW YORK CITY,
COLLECTOR'S OFFICE, *July* 5, 1888.

Hon. H. S. Beattie, surveyor, etc.

SIR: Referring to my letters to you of the 23d ultimo and the 3d instant touching the discharging of the cargoes of sugar from the Arecibo and Lauristina, I respectfully request that until further notice the method therein suggested of separating the sugar according to the several brands it may bear be continued in future cases.

The S. S. Santiago is now at the Brooklyn refinery and will be ready to discharge her cargo this morning. Please see that her cargo is discharged in the manner indicated.

Respectfully yours, C. P. McCLELLAND,
Special Deputy Collector."

The same were read in evidence.

Plaintiffs' counsel then called as a witness—

JOHN W. O'BRIEN, who, having been duly sworn, testified that in 1888 he had charge of all the weighable merchandise at the port of New York; that on the receipt of said letters the surveyor, through the weighers, caused the sugars on said vessels to be separated

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in conformity to said letters according to their plantation marks which were on the hogsheads, tierces, barrels, bags,

one or two of certain plantation marks, and we would set that aside, and it remained there until there were enough of that same plantation mark discharged so as to make a draft. Then we weighed that, and when we reached the twentieth draft, of course, we laid it out as a sample of that plantation mark, and that was done as the cargo was discharged from the ship.

Plaintiffs' counsel called as a witness—

ROBERT E. BOWNE, who testified that he was an examiner in the appraiser's office at this port, and had been such about fourteen years, and in 1888, from the 1st of April onward, had supervision of the sampling of sugar on the wharves, and the disposition and examining of the samples; that the sampler who sampled the packages indicated to them by the weighers and which were stencilled "U. S. sample" took samples in little tin boxes containing about half a pound each. As to the hogsheads, if there were 500 hogsheads, the first hogshead of a particular plantation mark coming out of the ship was weighed and called No. 1 and set aside as a sample hogshead; then the 5th hogshead having that mark was marked No. 2, and so with the 9th, 13th, 17th, &c., until the entire 25 per cent. was laid out.

That the samplers sampled the packages so designated by the weighers.

26 That the samples taken were, mark by mark, packed in wooden cases provided by the department, each marked by itself. They were then placed in a Government wagon in charge of a Government officer and taken to the classification-room of the appraiser's stores with a written report to the appraiser of the marks sampled.

That the sugars arriving in bags at the port of New York during the period from April to November, 1888, were separated by marks on the wharf. With reference to bag sugar, the packages were taken which were turned over to the examiners by the United States inspector and assistant weigher and stencilled "U. S. sample." The weigher selected five per cent., and after weighing they were stencilled "U. S. sample." The weigher selected the bags for sampling and the samples were taken from those representative bags; samples were not taken from any other bags, but if the sampler had reason to doubt their integrity, then they had a right to take generally from the cargo, rejecting all the sample bags. The rule was not to do so. There were various invoices which were marked, for instance, with the letter "H" or "F," 15,000, 20,000, or 30,000 bags, and when they sampled them and before the sampling commenced the weigher would return them by the different plantation marks and where the invoice showed one mark we would sample 15, 25, or 30 bags. Selections were made in accordance with the plantation marks by the weigher and discharging inspectors. With respect to the hogsheads and all wooden packages, boxes, barrels, tierces, &c., the collector would designate 25 per

27 cent. odd or 25 per cent. even, as the case might be. If there were 500 hogsheads a day, then the first hogshead coming

out of that mark is weighed, and that we called No. 1, and No. 1 is set aside as a sample. Then the 5th hogshead having that mark is No. 2, and so with the 9th, 13th, 17th, &c., until the entire 25 per cent. is laid out. That selection is made by the weigher. By plantation marks was meant a certain lot that came from some one plantation, and samples were selected with reference to these plantation marks, if they were not so laid out by the weigher. They were usually so laid out by the weigher during that period—that is, from June 3rd to September 1st, 1888. I presume the weigher received orders about June 1st to separate by plantation marks as he was found doing it. He stopped doing it about September 1st. The samples would be stacked upon the wharf in piles by the plantation marks during that time, and they would sample through the whole lot the proper percentage laid out by the weigher until the entire cargo was completed. Those that were piled up would be the number that were to be sampled. After September 1st they were not separated without they were so noted on the invoice by plantation marks. If the invoice called for six or seven different plantation marks, they would be laid out that way; but if the invoice was made up of 10,000 bags "F," and it showed 10 or 20 different plantation marks, it would still be laid out under that mark "F." The samples after they were separated, mark by mark, *and* packed in wooden chests provided by the department, each mark by itself. They were then locked, placed in a Government
28 wagon in charge of a Government officer, taken to the appraiser's stores, taken to the classification-room, and each mark mixed separately by itself.

Plaintiffs' counsel then called as a witness—

ABRAHAM G. REMSEN, who, having been duly sworn, testified that he had been an examiner of sugars in the custom-house about seventeen years, and was an examiner of sugar in the appraiser's department in 1888, from the 1st of April to the 1st of November; that he examined the sugars in question to ascertain whether they were above or below No. 13, Dutch standard. If all of one mark were below No. 13 all of that mark were thoroughly mixed together, and one sample of the mixture was numbered by him and sent to the laboratory and one sample was retained; a number of samples of each mark were received from the samplers. If there were one hundred hogsheads of one mark twenty-five samples of that mark (25 per cent.) were received, but that he sent to the laboratory but one sample of that mark made from a mixture of all the samples received by him of the mark in a tin box with a serial number placed on it by him. The serial number is begun arbitrarily at the opening of every new record in the examiner's room. Nothing is sent to the laboratory indicating the ship or the name of the importer or the mark; that a written return of the polariscopic test of the sugar is received back from the laboratory; that on receiving the tests he placed on the invoices, over his initials, the classification of the sugar, its polariscopic test as returned to
29 him from the laboratory, and the rate of duty the sugar

should pay; that under his initials were placed those of one of the assistant appraisers. There were in New York at that time six assistant appraisers.

That the appraiser has an official stamp which is placed on the invoices by a clerk, as a matter of course, after the examiners and assistant appraiser's initials are on. The appraiser in fact does not see the sugars, nor personally put on his stamp or classification.

That the witness had examined all the invoices in the suit and his return or classification was on them all, and that in all cases it was based on personal inspection by him of sugars as to color and on the polariscopic returns as to the polariscopic test of all those below No. 13, Dutch standard.

Plaintiffs' counsel then called as a witness—

LEWIS MCMULLEN, who, having been duly sworn, testified as follows: I was sole appraiser at the port of New York from April 23, 1885, to January 9, 1889. I had officers to assist me known as assistant appraisers and examiners in the sugar department in 1888. There were of examiners in that department Mr. Remsen and some six or seven others. There were of assistant appraisers Mr. Moore, since dead; Mr. Sturges, and several others.

Examiners are appointed by the Secretary of the Treasury upon my nomination, and take an oath of office. I know Mr. J. T. Leary and Mr. Charles S. Soule. I never nominated either of them
30 as examiners or appraisers at the port of New York.

A day or two after March 22, 1888, Mr. J. T. Leary came to my office, in New York, and presented a letter from the Secretary of the Treasury, of which the following is a copy:

TREASURY DEPARTMENT, OFFICE OF THE SECRETARY,
WASHINGTON, D. C., *March* 22, 1888.

Appraiser of merchandise, Boston, Massachusetts.

SIR: Upon the receipt of this communication you will direct the officer in charge of the polariscopic testing of sugars at your port to report for duty on and after April 1st, 1888, and until further ordered by the department to the appraiser of merchandise at the port of New York.

The officer now performing similar duty at New York will be detailed to take the place of the officer temporarily transferred from your office.

Respectfully yours, C. S. FAIRCHILD, *Secretary.*

He remained several months in the appraiser's department in charge of the polarizing of sugars. He was not at all subject to my directions. He acted there independently of me in the polarization of sugar.

31 The returns of the classifications upon sugar invoices which were made upon sugar below No. 13, Dutch standard, between May and October, 1888, and which were signed by the officers in my department and by myself, were entirely made and

based upon the polariscopic tests returned from the laboratory, signed by the chemist in charge. Mr. Soule appeared at my office about the date of the letter of which the following is a copy:

TREASURY DEPARTMENT, OFFICE OF THE SECRETARY,
WASHINGTON, D. C., *May* 28, 1888.

Appraiser of merchandise, Boston, Massachusetts.

SIR: Upon the receipt of this communication you will please detail Charles S. Soule, examiner in your office, for temporary duty under the appraiser at the port of New York, to assist Examiner J. T. Leary in polariscopic tests of sugar.

Respectfully yours, C. S. FAIRCHILD, *Secretary.*

He remained several months and, I presume, assisted Mr. Leary in polarizing sugar. He was not at all under my control or direction. So far as the polarization of sugar was done by Mr. Leary and Mr. Soule it was done entirely independent of me and of my direction or control in any way, and so far as I know entirely independent of the assistant appraisers.

Prior to the arrival of Mr. Leary the polarization and classification of sugar had been under my direction and control. Mr. Edward Scherer had been under my direction attending to the polarization of sugar prior to Mr. Leary's arrival.

He had been there for several years, having been nomi-
32 nated as an examiner by one of my predecessors and holding that office and continued in it by me. Mr. Ball had been one of the examiners and he was transferred to Boston on the arrival of Mr. Soule. Examiner Abbott was also transferred to Boston under the first letter.

Question by plaintiffs' counsel. I see that the first part of this letter in my hand of March 22, commences, "As recommended in your letter of February 20, certain persons are removed." State the facts as to that recommendation.

A. Mr. Scherer's name was upon the list of officers which I was directed to recommend the removal of.

Being cross-examined, the witness said there were sixty or seventy examiners of merchandise at the port of New York. They examine different kinds of merchandise according as they are familiar with the particular commodity. There were ten or twelve in the sugar laboratory in 1888, performing different duties where polariscopic tests of sugar are made. There are a number of examiners who do that and nothing else. I think there were five employed in the sugar-room making polariscopic tests from April 1st to November, 1888.

Plaintiffs' counsel then called as a witness—

J. THOMAS LEARY, who, having been duly sworn, testified as follows: I reside at Boston and have held appointments at the custom-house there. I produce them.

Plaintiffs' counsel then read them in evidence as follows:

33 EXHIBIT 52.

UNITED STATES OF AMERICA.

(Cut.)

Certificate of Appointment.

This is to certify that J. Thomas Leary, having been confirmed by the Secretary of the Treasury as clerk and sampler in and for the district of Boston and Charlestown, State of Massachusetts, is authorized to exercise and perform the duties of the said office in accordance with the laws of the United States and regulations of the Treasury Department, and his authority will be respected accordingly until his appointment is revoked.

Given under my hand and seal of office, at the custom-
[SEAL.] house, Boston, Mass., this 15th day of October, in the year of our Lord one thousand eight hundred and seventy-nine.

THOS. G. RICE,
U. S. Appraiser.

A true copy.
Attest: J. THOMAS LEARY.

34 EXHIBIT 53.

UNITED STATES OF AMERICA.

(Cut.)

Certificate of Appointment.

This is to certify that J. Thomas Leary, having been confirmed by the Secretary of the Treasury as examiner in and for the district of Boston and Charlestown, State of Massachusetts, is authorized to exercise and perform the duties of the said office in accordance with the laws of the United States and regulations of the Treasury Department, and his authority will be respected accordingly until his appointment is revoked.

Given under my hand and seal of office, at the custom-
[SEAL.] house, Boston, this seventh day of May, in the year of our Lord one thousand eight hundred and eighty.

THOS. G. RICE,
R. K. DARRAH,
Appraisers.

A true copy.
Attest: J. THOMAS LEARY.

35 EXHIBIT 54.

(Cat. No. 1004.)

UNITED STATES OF AMERICA.

(Cut.)

Certificate of Appointment.

This is to certify that J. T. Leary, having been confirmed by the Secretary of the Treasury as examiner No. 6, class 4, in and for the district of Boston and Charlestown, State of Massachusetts, is authorized to exercise and perform the duties of the said office in accordance with the laws of the United States and regulations of the Treasury Department, and his authority will be respected accordingly until his appointment is revoked.

Given under my hand and seal of office, at the custom-house, appraiser's office, this twenty-third day of April, in [SEAL.] the year of our Lord one thousand eight hundred and eighty-six.

A. B. STEARNS, *Appraiser.*

A true copy.
Attest: J. THOMAS LEARY.

36 About the time I received Exhibit 54 I took an oath of office as examiner at Boston up to the 1st of November, 1888. I did not take any other oath of office anywhere. I never received any appointment or took any oath of office as an examiner at New York; I never was an examiner there. While in New York I was supervising the sampling of sugar there. I made the polariscopic returns to the appraiser while there, which I signed as "Chemist in charge of polarization," and I was in fact such. I received a verbal order from the appraiser in Boston based, as I understand, upon an order from the Secretary of the Treasury to go to New York, and I went on that; while there I took charge of the polarization of sugars there and personally polarized one-quarter of the samples received at the laboratory. What I did there was this: I supervised the preparation of the solutions, read one set of the solutions, and signed all the returns as chemist in charge of polarization. One man representing me, one of the regular appointed examiners, prepared a set of solutions which I was subsequently to polarize. While the solutions were being prepared I walked about observing how the other examiners weighed the sugars and prepared the solutions. When the solutions were fully prepared I then took my place at the polariscope used by me and read and recorded the tests. When the tests were completed my opposite read the tickets or slips upon which his tests of duplicate solutions were recorded and, calling out the same, when the tests appearing upon my own slips
37 were within the regulation difference these slips were thrown out and that particular sample was done with. This prac-

tice was repeated with all the solutions previously made, and if no excessive disagreement of tests occurred no other action was taken beyond recording and certifying to the sugar examiner.

Mr. Soule came about June 4th and made tests right along under my direction.

Plaintiffs' counsel then called as a witness—

CHARLES S. SOULE, who, having been duly sworn, testified that in 1888 he was an examiner in Boston and had taken an oath of office there, but never was appointed an examiner or assistant appraiser in New York, never took any oath of office there, came here by order of the appraiser at Boston and acted under Mr. Leary, was an assistant to him and made while here one test of nearly every other sample of sugar—that is, he approximately examined half the sugar. After he got here he tested sugars under Mr. McMullen's directions, he thought. Mr. McMullen told him to report to Mr. Leary. He made one test of every other sample that came to the laboratory as near as he could and wrote the test on a slip of paper and that slip was copied by a clerk on a sheet and he with the other examiners signed that sheet. He sat opposite Mr. Landsman and Mr. Moore. He examined possibly half the sugar.

38 EXHIBIT A.

PORT OF NEW YORK, APPRAISER'S OFFICE,
402 WASHINGTON STREET, *September* 11*th*, 1888.

Mr. Charles S. Soule, examiner U. S. laboratory:

SIR: By direction of the Secretary of the Treasury you will at once proceed to Philadelphia, and upon arrival there report to the appraiser at that port for the purpose of assisting in the polarizing of sugars.

Respectfully, LEWIS McMULLEN, *Appraiser*.

39 Plaintiffs' counsel called as a witness—

FREDERICK W. BROOKS, who, having been duly sworn, testified that he was a clerk and liquidator in the custom-house and had been for many years; that he was familiar with the course of business at the custom-house and with custom papers and with the various endorsements upon them. In answer to the question in what method of indication and in what manner, if at all, it appeared upon the papers that the collector designated certain of the imported packages which were to be examined by the appraisers, he answered, It is written upon the entry over the printed matter of the oath, and it is written upon the invoice, under the stamp of the entry clerk, just above the signature of the deputy collector. Where the letters "Whf" appeared in the places that have been named, that indicates that the goods are of such a nature that they are not to be sent to the public stores for examination, but are to be examined on the wharf; that if the collector designates any particular numbered

packages to be examined by the appraiser, that probably appears upon the entry across the oath and upon the invoice at the place stated. If he does designate any particular number of packages to be examined by the appraiser, that is where it appears, and if it does not appear there there is no other place on the entry or invoice where it should appear. That was the general practice of the office. It may have varied, but he had not known an instance. There is another paper upon which that designation appears. It is called the permit. On that paper the designation appears under
40 the heading "Sent to appraiser's stores," and there is another form in which it sometimes appears under another heading, "Ordered."

That he had examined the invoices in this case; that the letters "Whf" were on each of the invoices and meant that the goods were to be examined on the wharf and not sent to the public stores.

That Exhibit No. 55, given below, was prepared from the invoices of endorsements which were made thereon at the time of the making of the entries. Upon three invoices there was no designation of wharf or of any kind whatever.

That the memoranda of "Whf" and "25 per cent. odd" or "even," as the case might be, was written on the invoice, entry, and permit at the same time by the deputy collector.

The witness Brooks further testified that he had computed the difference between the amount of duty paid and the amount that would have accrued if the duty were computed upon the polariscopic tests of the sugars which were stated by the importer on the entries and found the amount to be, with interest, $51,772.14.

41 PLAINTIFFS' COUNSEL: I notice that the invoices in this case, or the most of them, contain an entry or endorsement, made at the time of the entry, on the entry, on that paper entry, across the face of the oath and upon the invoice, which is a duplicate of the memorandum upon the paper entry above the signature of the deputy collector and just below the stamp, showing that the invoice was presented. That varies upon the different entries and invoices and is omitted from some of them. We have here, subject to correction, a statement of what that entry is upon the various invoices with which I believe the paper entries correspond. This statement, by agreement, may be marked in evidence in the case as a memorandum of what it is, subject to being corrected by the original papers, which are themselves in evidence. That endorsement, for instance, on Exhibit 1 is "Whf." —, 25 per cent. even on hhds. wharf on the bag, and upon the invoice the entry is simply "Whf," and on the other it corresponds with the endorsement upon the entry. There are some few invoices upon which there is no entry whatever. Those can be picked out and specified. They are shown on this memorandum by the invoice number, which identifies them exactly with the paper. In accordance with that statement I offer the memorandum in evidence, subject to any necessary correction.

DEFENDANT'S COUNSEL: It is a memorandum which is prepared from the files, and I think it is correct.

The memorandum was read in evidence, subject to correction, as follows:

42 EXHIBIT 55.

In. No.	Contents.			Dep. col.
12156	5,520 bags....	Wharf.....	....	W. N. L.
12157	1,500 bags....	"	....	W. N. L.
5968	8,806 bags....	Wharf	.....	Cannon.
1065	459 bags.....	Wharf.....	....	O. H. K.
1066	2,116 bags....	"	.....	P. H. K.
17459	363 hhds.....	Wharf.....	25 % odd.....	L. F. N.
8711	539 hhds.....	Wharf.....	25 % odd.....	W. N. L.
	976 bags.....	"	....	W. N. L.
19151	5,498 bags....	Wharf.....	....	A. G.
	87 tierces.....	"	25 % even....	
8712	137 hhds.....	Wharf.....	25 % odd.....	J. J. V.
8713	703 hhds.....	"	25 % odd.....	"
8715	250 hhds.....	"	25 % odd.....	"
8710	39 hhds.....	"	25 % odd.....	"
8714	169 hhds.....	"	25 % odd.....	"
8711	Missing.....	.....	.....	
4594	— bags.....	Wharf.....	....	152679.
10112	— bags.....	Wharf.....	... .	J. J. V.
2245	— bags.....	Wharf.....	....	J. B. Mc.
5125	9,000 bags....	Wharf...	.....	J. C. D. F.
10988	4,496 bags....	Wharf.....	....	J. L. C.
10987	500 bags.....	"	... .	"
11747	817 bags.....	Wharf.....	.....	W. N. L.
11746	6,085 bags....	"	.....	"
8912	55,555 bags...	Wharf.....	.....	A. G.
43	488 hhds.....	"	25 % even....	
11980	484 hhds.....	Wharf.....	25 % even....	A. G.
11981	4,000 bags	.....	.....	A. G.
18758	2,655 bags....	Wharf.....	.....	O. H. K.
1040	1,560 bags....	Wharf.....	.....	J. C. F. B.
1041	5,465 bags....	"	.....	J. C. F. B.
15654	5,000 bags....	Wharf.....	.....	O. H. K.
	260 hhds.....	"	25 % even....	
15655	5,076 bags....	"	.....	"
15656	6,550 bags....	.....	.....	"
15657	195 hhds.....	"	25 % even....	"
17952	895 bags.....	Wharf.....	.....	W. N. L.
17951	2,965 bags.....	.....	.. ..	"
11748	7,444 bags.....	.....	.....	126178.
11749	16,301 bags....	.....	.....	
5123	601 hhds.....	Wharf.....	25 % odd.....	J. C. F. B.

Exhibit 55—Continued.

In. No.	Contents.			Dep. col.
	4,000 bags....	Wharf.....	.....	
5124	82 hhds.....	"	25 % odd.....	
7046	15,626 bags...	Wharf.....	.....	A. G.
7045	73 bags.....	"	.....	A. G.
13290	— bags.....	Wharf.....	.....	D. S. R.
13291	— bags.....	"	.....	"
12458	3,194 bags....	Wharf.....	.....	
	96 hhds.....	"	25 % even....	A. G.
10235	400 hhds.....	Wharf.....	25 % even....	125181.
11774	7,184 bags.....	.....	.....	A. G.
11775	17,116 bags...	"	.....	A. G.
5337	5,800 bags....	Wharf.....	.....	W. N. L.
7024	1,982 bags ...	Wharf.....	.....	122738.
7022	2,166 bags....	"	.....	
44	6,979 bags....	"	.....	
	60 hhds.....	"	25 % odd.....	
9516	3,000 bags....	Wharf.....	.....	121540.
	49 hhds.....	"	25 % odd.....	
9518	318 hhds.....	"	25 % odd.....	
9517	16 hhds.....	"	25 % odd.....	
7468	— hhds.....	Wharf.....	25 % even....	W. H. L.
7467	170 hhds.....	"	25 % even....	"
7469	805 hhds.....	"	25 % even....	"
7470	2,250 bags....	"	.....	"
7466	3,220 bags....	"	.....	"
6759	255 hhds.....	Wharf.....	(No per cent.).	A. G. 108091.
6758	229 hhds.....	"	25 % even....	A. G.
16187	2,008 bags....	Wharf.....	.....	W. H. L.
16188	2,410 bags....	"	.....	"
16186	2,090 bags....	"	.....	"
4690	139 hhds.....	Wharf.....	25 % even....	A. G.
4689	5,000 bags....	"	.....	A. G.
6702	2,972 bags....	Wharf.....	.....	A. G.
	201 hhds.....	"	25 % even....	
6703	1,028 bags....	"	.....	
14694	2,640 bags....	Wharf.....	.....	
	— hhds.....	Wharf.....	25 %.....	
14695	1,003 hhds....	"	25 % even....	
1064	13,529 bags...	Wharf.....	.....	A. G.
10422	5,500 bags....	Wharf.....	.....	A. G.
4630	6,475 bags....	Wharf.....	.....	W. N. L.
18250	6,400 bags....	Wharf.....	.....	A. G.
4797	5,000 bags....	Wharf.....	.....	F. B. McL.
2620	582 hhds.....	Wharf.....	25 % odd.....	
9254	5,000 bags....	.....	.....	A. G.
3160	762 hhds.....	Wharf.....	25 % odd.....	O. H. K.

Exhibit 55—Continued.

In. No.	Contents.			Dep. col.
45				
14478	344 hhds.....	Wharf.....	25 % odd.....	Cannon.
10495	4,500 bags....	Wharf.....		J. J. V.
10496	1,500 bags....	Wharf.....		"
14245	3,362 bags....	Wharf.....		D. S. R.
8675	— bags.....	Wharf.....		139769.
741	— bags.....	Wharf.....		W. N. L.

Entry 94455, original invoice, with direction as to sampling, missing.

12318	1,067 bags....	Wharf.....		
	118 hhds.....	"	25 % even....	H. G.
12320	103 hhds.....	"	25 % even....	
12319	5,000 bags....	"		
17345	2,000 bags....	Wharf.....		W. N. L.
17343	9,000 bags....	"		"
17344	400 hhds.....	.....		
	6 tierces.....	"	25 % odd.....	
17346	2,571 bags....	"		

46 The following are copies of the entries, invoices, permits, protests, reports to appraiser by the sampler of samples sent to appraiser for examination, and returns of the polariscopic tests in the importations by the Laurestina, entered June 28, 1888; by the G. M. Stanwood, entered July 6, 1888, and by the Saratoga, entered July 11, 1888:

Entry of Merchandise Imported by Havemeyers & Elder Sugar Refining Co. in the Str. Laurestina, whereof —— —— is Master, from Cardenas, Matanzas, & Cienfuegos.

NEW YORK, *June* 28, 1888.

Marks.	Nos.	Packages and contents.		Centrifugals, @ 2.20 for 95°.	Muscovadoes, 2c. for 90, deposit duty.	Invoice—where dated.	
R	₦9,000	Nine thousand bags centrifugal sugar.	2 9560 224 7762 9420 226 233 93 212 300 9620 228 350 9490 220 120 95 220 126 9350 216 107 9460 220 9,000	126 216 233 212 38681 71530 2,768,136	3.28 228 6339 2,560,049 36,092,099	Cardenas, June 8th, 1888, as per consul certificate, U. S. c'y, @ 3c., f. o. b. . 224 1019 604	$883,044.08
H	₦2,000	Two thousand bags centrifugal sugar.	318 96 224 261 95.20 " 113 93.50 216 189 94.50 220 681 96.60 228 438 95.60 224 2,000	111 35370 640,221 70051	60235 189 681 217,000 319,099	Matanzas, June 11th, 1888, 324,963 @ 3c., f. o. b.	19,206.63
A 1 | 406	400	Four hundred hhds. and	386 88 192 14 162	192 666,375 666,371	217,109 490,059	Cienfuegos, June 19th, 1888. @ 2 1/16, c. & f., $5,834.80 @ 2 3/4 " 13,476.62	
	6	six tierces muscovado sugar.	14 78 152 24169 386 6 88 192 6 6 sweepings 88 192 6	6,024 1,168 145	(1337) 411,582	C. & f., $19,311.42 Fr'ght, 1,209.00	$18,102.42
				667,688 628,368			

Inspector reports—
84 bags sweepings.
3 hhds. drainings.
J. V. R.
Take additional duty
8, 9, '88. W. T. M.

4—243

DANIEL MAGONE, COLLECTOR, ETC.

25

Entry of Merchandise Imported by Havemeyers & Elder Sugar Refining Co., &c.—Continued.

Marks.	Nos.	Packages and contents.				Centrifugals, @ 2.20 for 95°.	Muscovadoes, 2c. for 90, deposit duty.	Invoice—where dated.			
B 1 | 3571	3,571	Thirty-five hundred and seventy-one bags centrifugal sugar.	1,770	9540	224			Cienfuegos, June 19th, 1888,			
			464	9536	"			3234	687,723		
			1,337	95	220	1,076,119		@ 3c., f. o. b.,	$32,283.57		
			3,571				3,031,863	(78)	15,175		
			78 sweepings.	9330	224		400				
						*1,097,601			1,027,553		
						74,051 71,530	3,032,856		139		
						21,482		@ 3 1/16, f. o. b.,	657.89		32,941.46
									1,027,730		
In all,	14,977	pkges.	24,169	152	367.37	4,505,958	707,168 Sp.	309,099 40			$153,294.59
			673,712	192	12,935.27						
14,571 bags centrifs.			74,686	216	1,613.22	4,570,528	717,302 Am.	309,139			
400 hhds. musco.			71,539	213	1,516.41						
6 tierces "			3,032,260	220	66,709.72						
			309,099	228	7,047.46		$18,102				
14,977			1,027,699	224	23,020.46						
						Lay.					
			5,213,154	207	5.20					20 %	
			26					430	6c. $26		
					113,215.11						
						113,215.11 A. E.	A. L. C.	2580			

Havemeyers & Elder Sugar Refining Co., principal.
Theo. A. Havemeyer, surety.

3 b.b., 4 inv.

4,570,528, 2.20 = $100,551.62*
717,302, 2 = 14,346.04*

$114,897.66*

Brooklyn, Eastern District, stores.

To be withdrawn for consumption only. J. S. S. 4 inv.

4,570,528, 2½ dep. = 100,551.62
717,302, 2 " = 14,346.04

114,897.66

O K. *(a*
HAVEMEYERS & ELDER SUGAR REFG CO.
R. DE WARDENER, *Attorney.*

DANIEL MAGONE, COLLECTOR, ETC.

* Erased in copy.

48 [Endorsed:] Warehouse bond No. —. Havemeyers & Elder Sugar Refining Co., No. 117 Wall street, New York. 550, 551. Str. Laurestina. 98423. June 28, '88. Aug., 340. Aug., 601. App. Aug't 28; app. Aug't 20. Appeal No. 11083. Filed Sept. 19, 1888. Protested Sept. 19, 1888. Sugar. H. & E. S. R. Co.

49 *Oath of Owner in Cases where Merchandise Has Been Actually Purchased.*

I, R. de Wardener, stockholder & attorney of the Havemeyers & Elder Sugar Refining Co., do solemnly and truly swear that the entry now delivered by me to the collector of New York contains a just and true account of the goods, wares, and merchandise imported by or consigned to me in the str. Laurestina, whereof —— —— is master, from Cardenas, Matanzas, & Cienfuegos: that the invoice which I now produce contains a just and faithful account of the actual cost of the said goods, wares, and merchandise, including all costs of finishing the said goods, wares, and merchandise to their present condition, and no other discount, drawback, or bounty but such as has been actually allowed on the same; that I do not know or believe in the existence of any invoice or bill of lading other than those now produced by me, and that they are in the state in which I actually received them; and I further solemnly and truly swear that I have not in the said entry or invoice concealed or suppressed anything whereby the United States may be defrauded of any part of the duty lawfully due on the said goods, wares, and merchandise; that the said invoice and the declaration thereon are in all respects true and were made by the person by whom the same purports to have been made, and if at any time hereafter I discover any error in the said invoice or in the account now produced of the said goods, wares, and merchandise or receive any other invoice of the same I will immediately make the same
50 known to this collector of the district.

R. DE WARDENER.

Sworn to this 23 day of June, 1888, before me—

W. H. LANE,
Deputy Collector.

[Written across the face:] Whf. 25% odd on hhd.

51 Entry No. 98423. Bond No. 21910. NEW YORK, *June* 28, 1888.

Withdrawal Entry for Consumption at Port of Original Importation.

Entry of merchandise intended to be withdrawn from warehouse by Havemeyers & Elder Sugar Refining Co., which was imported in this district on the 28th of June, 1888, by Havemeyers & Elder Sugar Refining Co. in the str. "Laurestina," —— ——, master, from ——.

Marks.	Nos.	Packages and contents.	Quantities.		Value.
Various.	5,000	Five thousand bags (centrifugal) sugar.....	*@* 2.20 1,565,000	.....	$46,000 00

Paid 114,897 66
Duty..... 113,215 11
To refund ... 1,682 55

9, 24, '88. Sepr. ac.
Sept. 22, '88.
M. W. D.

Brooklyn; Eastern District, stores.

J. M. C. 1,565,000 2.20 34,430 00 C. E. P.
July 3. M. S. N. C.

HAVEMEYERS & ELDER SUGAR REF'G CO.
R. DE WARDENER, *Attorney.*

52 [Endorsed:] Withdrawal. Entry No. —. Bond No. —. Havemeyers & Elder Sugar Refining Co., No. 117 Wall street, New York. Vessel, ——. ——, —, 189-. H. & E. S. R. Co.

DANIEL MAGONE, COLLECTOR, ETC.

53 Entry No. 98423. Bond No. 21910. NEW YORK, *June* 28, 1888.

Withdrawal Entry for Consumption at Port of Original Importation.

Entry of merchandise intended to be withdrawn from warehouse by Havemeyers & Elder Sugar Refining Co., which was imported in this district on the 28th of June, 1888, by Havemeyers & Elder Sugar Refining Co. in the str. "Laurestina," —— ——, master, from Cardenas, Matanzas, & Cienfuegos.

Marks.	Nos.	Packages and contents.	Quantities.		Value.
A 1.	# 406	Four hundred hhds. and six tierces muscovado sugar.....	*Gr.* 2c. 717,302	.....	$18,102 42

J. M. C. 717,302 2c. 14,346 04 M.
C. E. P.
June 29. M. S. N. C.

Brooklyn, Eastern District, stores.

HAVEMEYERS & ELDER SUGAR REF'G CO.
R. DE WARDENER, *Attorney.*

54 [Endorsed:] Withdrawal. Entry No. —. Bond No. —. Havemeyers & Elder Sugar Refining Co., No. 117 Wall street, New York. Vessel, ——. ——, 189-. H. & E. S. R. Co.

55 Entry No. 98423. Bond No. 21910. NEW YORK, *June* 28, 1888.

Withdrawal Entry for Consumption at Port of Original Importation.

Entry of merchandise intended to be withdrawn from warehouse by Havemeyers & Elder Sugar Refining Co., which was imported in this district on the 28th of June, 1888, by Havemeyers & Elder Sugar Refining Co. in the str. "Laurestina," —— —— master, from Cardenas, Matanzas, & Cienfuegos.

Marks.	Nos.	Packages and contents.	Quantities.		Value.
Various.	5,000	Five thousand bags (centrifugal) sugar.....	@ 2.20 1,565,000	.....	$46,000 00

J. M. C. 1,565,000 2.20 34,430 00 M.

C. E. P.

Brooklyn, Eastern District, stores. June 30. M. J. J. K.

HAVEMEYERS & ELDER SUGAR REF'G CO.
R. DE WARDENER, *Attorney.*

56 [Endorsed:] Withdrawal. Entry No. —. Bond No. —. Havemeyers & Elder Sugar Refining Co., No. 117 Wall street, New York. Vessel, ——. —— —, 189–. H. & E. S. R. Co.

DANIEL MAGONE, COLLECTOR, ETC.

57 Entry No. 98423. Bond No. 21910. NEW YORK, *June* 28, 1888.

Withdrawal Entry for Consumption at Port of Original Importation.

Entry of merchandise intended to be withdrawn from warehouse by Havemeyers & Elder Sugar Refining Co., which was imported in this district on the 28th of June, 1888, by Havemeyers & Elder Sugar Refining Co. in the str. "Lauestina," —— —— master, from Cardenas, Matanzas, & Cienfuegos.

Marks.	Nos.	Packages and contents.	Quantities		Value.
Various.	4,571	Four thousand five hundred and seventy-one bags (centrifugal) sugar.	@ 2.20 1,440,528	....	$43,192 17

M.

J. M. C. 1,440,528 2.20 31,691 62
Brooklyn, Eastern District, stores. June 29. M. C. E. P. S. N. C.

HAVEMEYERS & ELDER SUGAR REF'G CO.
R. DE WARDENER, *Attorney.*

58 [Endorsed:] Withdrawal. Entry No. —. Bond No. —. Havemeyers & Elder Sugar Refining Co., No. 117 Wall street, New York. Vessel, ——. —— —, 189–. H. & E. S. R. Co.

59 Duplicate. C 7 | 10. 6 | 29.

Invoice of centrifugal sugars shipped by the undersigned by order of Messrs. Hidalgo & Co., Havana, on board the Brt. S. S. "Laurestina," Batty is master, bound for New York, via Matanzas, for account and risk of whom it may concern and consigned to order Havemeyers & Elder Sugar Refining Co.

[Written across the face:] W. H.

R,	7,762 bags, test	94.20	$2 20
Progresso,	233 " "	93.00	2 12
Dos. Amigos,	300 " "	96.20	2 28
Esperanga,	350 " "	94.90	2 20
Soledad,	120 " "	95.00	2 20
C. Meverdos,	126 " "	93.50	2 16
Armonia,	107 " "	94.60	2 20
	8,998		
Cent. Amigos,	2 bags, test	95.60	2 24

R.

1 # 9,000, 9,000 bags centrifugal sugars, w'ng 2,796,097 lbs. gross.
Tare 1 %..... 27,961 "

Net.... 2,768,136 lbs. a. 3
cents per lb., f. o. b..... $83,044 08

17343.

E. and O. E.
Cardenas, June 8th, 1888.

ROJAS & BAROT.

[On the margin:] Not above No. 13, D. S.

Report amended to correspond to invoice.
Sept. 4, '88.

A. G. R.
DAN'L J. MOORE.

Appraiser:

The weigher reports in his return 9,000 bags as entered. Please make your report to correspond.
Aug't 28, '88.

J. M.
E. A. W.

[Written across the face.]

17343. H. & E. S. Ref. Co. Laurestina. Jun-, '88. 2⅛ dep.
Collector's office, naval office.
Entered value, 83,044.08.
Name of vessel or transportation line, Laurestina.
Warehouse, Brooklyn, E. D., stores.

— certify that this invoice was presented to me on entry, custom-house, New York, this 28 day of Jun-, 1888.
Whf.

W. H. LANE.

Appraiser:

Please note that the total number of specified bags is less than the number entered by 2.
Au'st 20, '88.

J. M.

W. T. M.

See U. S. weigher's return for this cargo.
Marks & quantities as copied from his return.
Aug. 22, '88.

A. G. R.
DAN'L J. MOORE.

Sugar as noted.
July 17, '88.

A. G. R.
D. STURGES.
D. D.

Approved.

LEWIS McMULLEN, *Appraiser.*

60 [Endorsed:] 17343. Cardenas. Invoice No. 201. Vessel, Brt. S. S. Laurestina. 9,000 bags sugar. Amount, $83,044.08. Shipped by Rojas and Barot, Cardenas, June 16th, 1888. Consigned to order, New York. E. H. L. Feb. 4, 1891. Exhibit 49 I².

61 (Form 142.)

I, George B. Derchapelles, of Cardenas, do solemnly and truly declare that I am the true agent of the purchasers of the goods, wares, or merchandise in the within invoice mentioned and described; that the said invoice is in all respects true; that as to all the goods, wares, and merchandise therein mentioned it contains a true and full statement of the time when and the place where the same were purchased, the actual cost and quantity thereof, and of all charges thereon; that no discounts, bounties, or drawbacks are contained in said invoice except such as have been actually allowed thereon; that the currency in which said invoice is made out is the currency which was actually paid for the said goods, wares, and merchandise, and that no different invoice thereof has been or will be furnished to any one. I further declare that it is intended to make entry of the goods, wares, and merchandise mentioned in said invoice at the port of New York, in the United States of America.
Signed in triplicate.
Dated at Cardenas the 16th day of June, 1888.

GEORGE B. DERCHAPELLES.

62

COMMERCIAL AGENCY OF THE
UNITED STATES OF AMERICA,
CARDENAS, CUBA.

I, the undersigned, commercial agent of the United States of America for Cardenas and the dependencies thereof, do hereby certify that at Cardenas, on this 16th day of June, A. D. 1888, the within invoice, numbered 201, in which are mentioned and described certain 9,000 bags of centrifugal sugars, amounting, with the charges thereon, to the gross sum of $83,044.08, was produced to me by G. B. Derchapelles of the goods, wares, and merchandise therein mentioned, who thereupon declared that it was intended to make entry of said goods, wares, and merchandise at the port of New York, in the United States of America. I do further certify that I am satisfied that the person making the declaration hereunto annexed is the person he represents himself to be; that he is a credible person, and that the statements made in the said declaration are true.

I certify that the — dollar of the currency of the island of Cuba on the day of the date of the annexed invoice is — cents in Spanish gold — dollar, estimated at 92½ cents, American gold, to the dollar.

Witness my hand and seal of office, at Cardenas, the day and year aforesaid.

Number of fee, 229.

Amount of fee, $3.50, Am. gold.

JAMES M. CHURCHILL,
Commercial Agent of the United States.

63

6 | 29. C 7 | 10.

Invoice of centrifugal sugar shipped by the undersigned by order of Mess. Hidalgo & Co., of Havana, on board the Brit. S. S. "Laurestina," Beatty, m'r, bound to New York, via Cienfuegos, for account and risk of whom it may concern, and consigned to order Havemeyers & Elder Sugar Refining Co.

[Written across the face:] W. H.

98423.

H 1–2,000, 2,000 bags, whg. gross 646,687 lbs.
1 % tare..... 6,466 "

Net..... 640,221 lbs. at 3c.
pr. lb., f. o. b..... $19,206 63

E. & O. E.

Matanzas, June 11th, 1888.

ZANETTI, DUBOIS & CO.

Appraiser:

The weigher reports on his return only 2,000 bags. Please make your report correspond.

Aug't 28, '88.

J. N.

H,	318 bags, test 96.00		$2 24
Feliz,	261 " " 95.20		2 24
B. Vista,	113 " " 93.50		2 16
Santiago,	189 " " 94.50		2 20
San Joaquin,	681 " " 96.60		2 28
Cent. Amigos,	438 " " 95.60		2 20
	2,002		

D. D.

[On the margin:] Not above No. 13, D. S.

Report amended to correspond with invoice.
Sept. 4, '88.

A. G. R.
DAN'L J. MOORE.

Appraiser:

Please note that the total of specified bags exceed*ing* by 2 the number entered.
Aug't 20, '88.

J. M.

Approved.

LEWIS McMULLEN, *Appraiser.*

See other invoice for 2 short.

Approved.

LEWIS McMULLEN, *Appraiser.*

See U. S. weigher's return—the marks; quantities are as copied from that return.
Aug. 22, '88.

A. G. R.
W. GUIN.

Sugar as noted.
July 17, '88.

A. G. R.
D. STURGES.

Approved.

LEWIS McMULLEN, *Appraiser.*

[Written across the face.]

17345. H. & E. S. Ref. Co. Laurestina. June, '88.
$2\frac{1}{5}$ dep.
Collector's office, naval office.
Entered value, 19,206.63.
Name of vessel or transportation line, Laurestina.
Warehouse, Brooklyn, E. D., stores.

I certify that this invoice was presented to me on entry, custom-house, New York, this 28 day of Jun-, 1888.
Whf.

W. H. LANE.

64 [Endorsed:] Duplicate. Matanzas. Triplicate invoice. Vessel, Brit. S. S. Laurestina. 2,000 bags sugar. Amount, $19,206.63. Shipped by Zanetti, Dubois & Co. Matanzas, June 11th, 1888. Consigned to order. E. H. L. Feb. 4, 1891. Exhibit 49 I².

65 (Form 142.)

I, Alfred Dubois, of Zanetti, Dubois & Co., of Matanzas, do solemnly and truly declare that I am the purchaser of the goods, wares, or merchandise in the within invoice mentioned and described; that the said invoice is in all respects true; that as to all the goods, wares, and merchandise therein mentioned it contains a true and full statement of the time when and the place where the same were purchased, the actual cost and quantity thereof, and of all charges thereon; that no discounts, bounties, or drawbacks are contained in said invoice except such as have been actually allowed thereon; that the currency in which said invoice is made out is the currency which was actually paid for the said goods, wares, and merchandise, and that no different invoice thereof has been or will be furnished to any one. I further declare that it is intended to make entry of the goods, wares, and merchandise mentioned in said invoice at the port of discharge in the United States of America.

Signed in triplicate.

Dated at Matanzas the 11th day of June, 1888.

ALFRED DUBOIS.

66 CONSULATE OF THE UNITED STATES OF AMERICA,
MATANZAS, CUBA.

I, the undersigned, consul of the United States of America for Matanzas and the dependencies thereof, do hereby certify that at Matanzas, on this 11th day of June, A. D. 1888, the within invoice numbered 174, in which are mentioned and described certain 2,000 bags sugar, amounting with the charges thereon to the gross sum of $19,206.63, was produced to me by Alfred Dubois, purchaser of the goods, wares, and merchandise therein mentioned, who thereupon declared that it was intended to make entry of said goods, wares, and merchandise at the port of ——, in the United States of America. I do further certify that I am satisfied that the person making the declaration hereto annexed is the person he represents himself to be; that he is a credible person, and that the statements made in the said declaration are true.

Witness my hand and seal of office, at Matanzas, the day and year aforesaid.

FRANK H. PIERCE,
Consul of the United States.

[L. S.]

67 6 | 29. C 1 | 10. 98423.

Invoice of sugars shipped by the undersigned on board the British steamer Laurestina, Batty, master, bound for New York, by order of Messrs. Hidalgo & Co., of Havana, for account and risk of whom it may concern, and consigned unto order Havemeyers & Elder Sugar Refining Co.

B #1–3571, 3,571 bags of centrifugal sugars.

#1–3500,	3,500 bags, weighing net	1,076,119 lbs.,	a. 3c..	32,283 57
#3501–3571,	71 *id.* " "	21,482 "	" $3\frac{1}{16}$.	657 89
		Net 1,097,601 lbs., f. o. b., U. St. c'cy.....		$32,941 46

E. E.
Cienfuegos, 19th June, 1888.

FEDERICO HUNICKE.

B,	1,770 bags, test 95.40.....		$2 24
	2,234		
Tumica,	464 bags, " 95.30.....		2 24
La Quito,	1,337 " " 95.00.....		2 20
	357		
	78 " sweepings, test 95.30.....		2 24

[On the margin:] Not above No. 13, D. S.

[Written across the face.]

17346. H. & E. Sug. R. Co. Laurestina. June, '88.
$2\frac{1}{5}$ dep.
Collector's office, naval office.
Entered value, 32,941.46.
Name of vessel or transportation line, Laurestina.
Warehouse, Brooklyn, E. D., stores.

— certify that this invoice was presented to me on entry, custom-house, New York, this 28 day of June, 1888.
Whf.
Sugar as noted.
July 17, '88.

A. G. R.
D. STURGES.

Approved.

LEWIS McMULLEN, *Appraiser.*

D. D.

68 [Endorsed:] (Duplicate.) Cienfuegos. Triplicate invoice, num. 221. Vessel, steamer Laurestina. 3,571 bags sugar. Amount, $32,941.46. Shipped by Federico Hunicke, Cienfuegos, 19th June, 1888. Consigned to order. E. H. L. Feb. 4, 1891. Exhibit 48 I².

69 (Form No. 139.)

I, Federico Hunicke, of Cienfuegos, do solemnly and truly declare that I am the shipper of the goods, wares, and merchandise in the within invoice mentioned and described; that the said invoice is in all respects true; that it contains a full and true statement of the actual market value of such of the said goods, wares, and merchandise as are subject to any ad valorem rate of duty or to any duty regulated or directed by law to be estimated or based upon the value of the square yard or of any other specified quantity or parcel at the time and place when and where the same were manufactured or procured, of the actual quantity of said goods, wares, and merchandise, and of all charges thereon; that no discounts, bounties, or drawbacks are contained in said invoice except such as have been actually allowed thereon, and that no invoice different from the one now produced has been or will be furnished to any one.

I further declare that it is intended to make entry of said goods, wares, and merchandise at the port of New York, in the United States of America.

(Signed in triplicate.)

FEDERICO HUNICKE.

Dated at Cienfuegos this nineteenth day of June, 1888.

70 CONSULATE OF THE UNITED STATES OF AMERICA,
CIENFUEGOS, CUBA.

(Form No. 140.)

I, the undersigned, consul of the United States of America at Cienfuegos, Cuba, do hereby certify that on this 19 day of June, anno Domini 1888, the within invoice, numbered 221, in which are mentioned and described certain sugar, amounting, with the charges thereon, to the gross sum of $32,941.46, was produced to me by Federico Hunicke in person, the shipper of the goods, wares, and merchandise therein mentioned, who thereupon declared in writing in my presence that it was intended to make entry of said goods, wares, and merchandise at the port of N. York, in the United States of America.

I do further certify that I am satisfied that the person making the declaration hereto annexed is the person he represents himself to be, and that the actual market values or wholesale prices of the goods, wares, and merchandise described in the said invoice in the principal markets of the country and at the time of exportation are correct and true (excepting as changed by me and set forth in the column of consular corrections of estimates).

Witness my hand and seal of office, at Cienfuegos, the day and year aforesaid.

HENRY N. GUNIGER,
[L. S.] *Consul of the United States.*

NOTE.—In cases of actual purchase form No. 138 should be used, but when the merchandise is otherwise obtained invoice form No. 139 should be used.

71 6 | 29. C 7 | 5.

Invoice of sugars shipped by the undersigned on board the British steamer Laurestina, Batty, master, bound for New York, by order of Messrs. Hidalgo & Co., of Havana, for account and risk of whom it may concern, and consigned unto order Havemeyers & Elder Sugar Refining Co.

A, 400 hhds. 6 tierces of muscavadoe sugars.....					173 44
#1–120,	119 hhds.	1 tierce,	net 217,109 lbs.,	a. $2\frac{11}{16}$....	5,834 80
#121–406,	281 *id.*	5 *id.*	" 490,059 "	" $2\frac{13}{16}$....	13,476 62
	400	6	Net 707,168 lbs.,	cost & freight.	$19,311 42
Less freight.....					1,209 "
U. S. c'cy.....					18,102 42

A, 386 hhds., test 88.00.....	$1 92
" 14 " " 78.00.....	1 52
" 6 tierces, " 88.00.....	1 92
6 bags of sweepings, 88.00.....	1 92

E. E.
Cienfuegos, 19th June, 1888.

[On the margin:] 8-9, 5, 9. Not above No. 13, D. S.

FEDERICO HUNICKE.

[Written across the face.]

17344. H. & E. S. Ref. Co., June, '88. Laurestina.
2 dep.
Entered value, 19,311.42.
Less..... 1,209.
Name of vessel or transportation line, Laurestina.
Warehouse, Brooklyn, E. D., stores.

I certify that this invoice was presented to me on entry, custom-house, New York, this 28 day of Jun-, 1888.
Whf., 25 % odd.

W. H. LANE.

Sugar as noted.
July 17, '88.
Correct.

A. G. R.
D. STURGES.

Approved.

LEWIS McMULLEN, *Appraiser.*

D. D.

[In pencil:] Bags, 6, sweepings.

72 [Endorsed:] (Duplicate.) Cienfuegos. Triplicate invoice, num. 220. Vessel, steamer Laurestina. 400 hhds. 6 tierces sugar. Amount, $18,102.42. Shipped by Federico Hunicke, Cienfuegos, 19th June, 1888. Consigned to order. E. H. L. Feb. 4, 1881. Exhibit 48 I. 17344.

73 Form No. 139.

I, Federico Hunicke, of Cienfuegos, do solemnly and truly declare that I am the shipper of the goods, wares, and merchandise in the within invoice mentioned and described; that the said invoice is in all respects true; that it contains a full and true statement of the actual market value of such of the said goods, wares, and merchandise as are subject to any ad valorem rate of duty or to any duty regulated or directed by law to be estimated or based upon the value of the square yard or of any other specified quantity or parcel at the time and place when and where the same were manufactured or procured, of the actual quantity of said goods, wares, and merchandise, and of all charges thereon; that no discounts, bounties, or drawbacks are contained in said invoice except such as have been actually allowed thereon, and that no invoice different from the one now produced has been or will be furnished to any one.

I further declare that it is intended to make entry of said goods, wares, and merchandise at the port of New York, in the United States of America.

(Signed in triplicate.)

FEDERICO HUNICKE.

Dated at Cienfuegos this nineteenth day of June, 1888.

74 CONSULATE OF THE UNITED STATES OF AMERICA, CIENFUEGOS, CUBA.

(Form No. 140.)

I, the undersigned, consul of the United States of America at Cienfuegos, Cuba, do hereby certify that on this 19 day of June, anno Domini 1888, the within invoice, numbered 220, in which are mentioned and described certain sugar, amounting, with the charges thereon, to the gross sum of $18,102.42, was produced to me by Federico Hunicke in person, the shipper of the goods, wares, and merchandise therein mentioned, who thereupon declared in writing in my presence that it was intended to make entry of said goods, wares, and merchandise at the port of New York, in the United States of America.

I do further certify that I am satisfied that the person making the declaration hereto annexed is the person he represents himself to be, and that the actual market value or wholesale prices of the goods, wares, and merchandise described in the said invoice in the principal markets of the country and at the time of exportation are correct and true (excepting as changed by me and set forth in the column of consular corrections of estimate).

Witness my hand and seal of office, at Cienfuegos, the day and year aforesaid.

HENRY N. GLUNIGER,
[L. S.] *Consul of the United States.*

NOTE.—In cases of actual purchase form No. 138 should be used, but when the merchandise is otherwise obtained invoice form No. 139 should be used.

75 117 WALL ST., NEW YORK, *September 19th*, 1888.

To Hon. Daniel Magone, collector of customs, port of New York.

SIR: We protest against your decision as to the rates and amount of duty to be paid on R = 9,000 bags sugar, H = 2,000 bags sugar, and B = 3,571 bags of sugar, imported by us, per "Laurestina," from Cardenas, and entered in your office for warehouse on or about June 28th, 1888, entry No. 98423, W. H. bond 21910, liquidated September 12th, 1888.

We claim that no lawful appraisement of the sugars has been made, and for the following reasons, to wit: 1st, that the packages of sugar from which samples were drawn by the United States Government employés for polarization and appraisement were not and are not the lawful packages from which to take samples for the purpose stated, the same, without designation thereof on the invoice by the collector, having been selected with reference to marks not on the invoice, and that they were therefor- selected contrary to and — violation of sections 2901 and 2939, Revised Statutes, which provide that the collector shall direct to be sent for examination and appraisement representative packages by designation thereof on the invoice—that is to say, according to the descriptive marks therein given of the packages. Section 2915, Revised Statutes, has reference solely to packages so designated from which samples of sugar shall be taken on which to determine the quality of the sugar. 2d, that the polariscope tests, being the appraise-
76 ment on which duties have been assessed and liquidated on the sugars in question, were improperly and illegally made or caused to be made by a person who has not been appointed an examiner for the port of New York by "the Secretary of the Treasury, on the nomination of the appraiser," as provided by section 2940, Revised Statutes. 3d, that the return or certification of the so-called appraisement upon the invoice of the sugars in question has been made or certified by an examiner who did not appraise by polariscope tests the sugars in question, and that the so-called appraisement and the liquidation of the collector do not show that the sugars in question have been sampled or appraised by the polariscope for duty, and, 4th, that the person who has made or caused to be made the so-called appraisement of the sugars in question by polariscope tests on which duties have been assessed on the sugars is not competent for such service and is not authorized by law to perform such service at the port of New York, and we have reason to believe is not authorized by law to perform such service

at any port; and we further claim that the sugars in question are entitled to be admitted and are only liable to duty under Schedule "E" of the tariff act of March 3d, 1883, at the rate of two and two-tenths (2.02) cents per pound.

We pay the excess of duty exacted under compulsion, solely in order to obtain possession of our sugars.

Very truly yours, HAVEMEYERS & ELDER SUGAR REF'G CO.
R. DE WARDENER, *Attorney.*

77 PORT OF NEW YORK, U. S. EXAMINER'S OFFICE,
DISTRICT NO. —, *July* 3, 1888.

To the appraiser:

I transmit herewith — samples of sugar, ex Laurestina, from —, imported by H. & Elder, being — per cent. of each of the following marks and drawn from the alternate * numbers thereof.

W. JACOBY, *Examiner.*

Marks.	Numbers sampled.†	Date sampled.	Sampler.	Remarks.
A.....	.....	T. H. O'D., Mc	G.....	400 hhds., 90. 6 tierces, 3. 14 stickers, 14.
	No stickers in sample packages.			

* "Odd" or "even," as the case may be.
† "1 and every 4th," or as the case may be.

NOTE.—In case of broken or damaged packages the numbers selected for sampling shall correspond as nearly as possible with those originally designated for that purpose. In case 25 per cent. and not exceeding 50 per cent. of a cargo be damaged a sample shall be taken from every other sound package, and if more than 50 per cent. be damaged a sample of every sound package shall be taken.

78 PORT OF NEW YORK, U. S. EXAMINER'S OFFICE,
DISTRICT No. 2, *July* 9, 1888.

To the appraiser:

I transmit herewith — samples of sugar, ex S. S. Laurestina, from Cuba, imported by H. & E. S. Ref. Co., being 5 per cent. of each of the following marks and drawn from the alternate* numbers thereof.

J. S. McELWEE, *Examiner.*

Marks.	Numbers sampled.†	Date sampled.	Sampler.	Remarks.
				Centrif.
R—7762 bags marked 1	319	July 9, '88	Conch	2,704
H—318 bags No. 2	50	.....	Tennant	2,705
3 B 1770 bags	.....	.....	McGuire	2,706
4 Esperanza 350 bags	20	.....	O'Donnell	2,707
5 Cent. Amigos 440 bags	18	.....	Hayden	2,708
6 Lunica 464 "	32	.....	.....	2,709
7 S. Joaquin 681 "	37	78 bag- centrif.		2,710
8 Santiago 189 "	13	6 " muscovado.		2,711
9 B. Vista 113 "	6	—		2,712
10 Armorria 107 "	9	84 bags sweepings melted.		2,713
11 Progresso 233 "	20	.....	.....	2,714
12 D. Amigos 300 "	17	.....	.....	2,715
13 Soledad 120 "	29	.....	.....	2,716
14 Feliz 261 "	22	.....	.....	2,717
15 Le Quito 1337 "	73	.....	.....	2,718
16 C. Worced 126 "	9	.....	.....	2,719

* "Odd" or "even," as the case may be.
† "1 and every 4th," or as the case may be.

NOTE.—In case of broken or damaged packages the numbers selected for sampling shall correspond as nearly as possible with those originally designated for that purpose. In case 25 per cent. and not exceeding 50 per cent. of a cargo be damaged a sample shall be taken from every other sound package, and if more than 50 per cent. be damaged a sample of every sound package shall be taken.

Entry of Merchandise Imported by Havemeyers & Elder Sugar Refining Co. in the B'k "G. M. Stanwood," Whereof —— —— is Master, from Barbadoes.

NEW YORK, *July 6th*, 1888.

Marks.	Nos.	Packages and contents.		Muscovadoes, @ 2c. for 90°.	Invoice, where dated.
				Deposit duty.	Barbadoes, June 11th, 1888, as per consul's certificate.
A.	582	Five hundred and eighty-two hhds., thirty-five tierces, & fifty barrels muscovado sugar	1,507 42 5,453 80 7,708 24 2,239 32 2,265 56 394 96 419 24 608 60 80 52 287 40 288 61 167 09 670 56 23,090 72	Lay, 23,090.72 G. M. 1,211,585 Am. lbs..	U. S. currency.
"	35				
"	50				Charges, $29,813 34 3,764 27 $26,049 07
	667	Pckgs.	188 21 204 192 196 208 184 180 212 216 172 176 275 80,182 273,190 357,855 119,756 166,396 18,988 22,785 33,811 3,798 13,291 13,291 9,494 24,384 1,156,921 E. A., Aug't 13, '88. J. M.		All charges appearing on invoice not deducted on entry are not included in the price of the goods. M.

D. L. R. J. M.
1,211,585, 2c., 24,231.70.
J. D. O., 147. S. N. C. J. M.
Havemeyers & Elder Sugar Ref'g Co., principal.
Theo. A. Havemeyer, surety.
1 June. 1 b. l., = 1,211,585, @ 2c., = $24,231.70.

Duty..... 24,231 70
A..... 23,090 72 Lay.

Ref.... 1,140 98 1,140.98. G. M.
HAVEMEYERS & ELDER SUGAR REF'G CO.,
R. DE WARDENER, *Attorney.*

80 [Endorsed:] 1624. Import. Havemeyers & Elder Sugar Refining Co., No. 117 Wall street, New York. #554. "G. M. Stanwood." 101,915. H. & E. S. R. Co. O., 147. E. H. L. Feb. 4, 1891. Exhibit 9. Aug. 8, '88. 9696. Aug. '88. Appeal No. 9235. Filed Aug. 11, 1888. Protested Aug. 11, 1888.

81 *Oath of Owner in Cases where Merchandise Has Been Actually Purchased.*

I, R. de Wardener, a stockholder, attorney of the Havemeyers & Elder Sugar Refining Co., do solemnly and truly swear that the entry now delivered by me to the collector of New York contains a just and true account of the goods, wares, and merchandise imported by or consigned to me in the b'k "G. M. Stanwood," whereof —— —— is master, from Barbadoes; that the invoice which I now produce contains a just and faithful account of the actual cost of the said goods, wares, and merchandise, including all costs of finishing the said goods, wares, and merchandise to their present consition, and no other discount, drawback, or bounty but such as has been actually allowed on the same; that I do not know or believe in the existence of any invoice or bill of lading other than these now produced by me, and that they are in the State in which I actually received them; and I further solemnly and truly swear that I have not in the said entry or invoice concealed or suppressed anything whereby the United States may be defrauded of any part of the duty lawfully due on the said goods, wares, and merchandise; that the said invoice and the declaration thereon are in all respects true and were made by the person by whom the same purports to have been made, and if at any time hereafter I discover any error in the said invoice or in the account now produced of the said goods, wares, and merchandise or receive any other invoice of the same I will immediately make the same known to the collector of this
82 district.

R. DE WARDENER.

Sworn to this 6 day of July, 1888, before me—

A. GERITZEN.

[Written across the face:] Whf. 25 % odd.

(Here follows photolithograph marked pp. 83 and 84.)

85 Duplicate.

(Form No. 138.)

Declaration to be Made by the Purchaser or Owner where Merchandise has been Actually Purchased.

We, Da Costa & Co., of Barbados, W. I., do solemnly and truly declare that we are the purchasers & shippers of the goods, wares, or merchandise in the annexed invoice mentioned and described; that the said invoice is in all respects true; that it contains a true and full statement of the time when and the place where the goods, wares, and merchandise therein mentioned, and which are subject to any ad valorem rate of duty or to any duty regulated or directed by law to be estimated, or based upon the value of the square yard

or of any other specified quantity or parcel, were purchased, and the actual cost and quantity thereof and of all charges thereon; that no discounts, bounties, or drawbacks are contained in said invoice but such as have been actually allowed thereon; that the currency in which said invoice is made out is the currency which was actually paid or is to be paid for said goods, wares, and merchandise, and that no different invoice thereof has been or will be furnished to any one.

We further declare that it is intended to make entry of the goods, wares, and merchandise mentioned in said invoice at the port of Delaware breakwater for orders in the United States of America.

Dated at Barbados, W. I., this 11 day of June, 1888.

DA COSTA & CO.

86 (Form No. 140.)

I, L. G. Reed, consul of the United States at Barbados, W. I., do hereby certify that at Barbados, W. I., on this 11 day of June, anno Domini 1888, the within invoice, numbered 70, in which are mentioned and described certain packages sugar, amounting, with the charges thereon, to the gross sum of $29,813.34, American gold, was produced to me by Da Costa & Co. in person, the purchasers & shipper- of the goods, wares, merchandise therein mentioned, who thereupon declared in writing, in my presence, that it was intended to make entry of the said goods, wares, and merchandise at the port of entry in the United States of America.

I do further certify that I am satisfied that the person making the declaration hereto annexed is the person he represents himself to be, and the actual market values or wholesale prices of the goods, wares, and merchandise described in the said invoice in the principal markets of the country and at the time of exportation are correct and true (or as set forth in the column of consular correctness of estimates).

Witness my hand and seal of office, at Barbados, W. I., the day and year aforesaid.

[SEAL.] L. G. REED, *Consul.*

U. S. consulate, Barbados. Triplicate invoice, No. 70. Amount, $29,813.34: consular fee, $2.50.

87 *Consumption Permit.*

D. S. R. PORT OF NEW YORK.

To the inspector:

We certify that Havemeyers & Elder Sugar Ref'g Co. has paid or secured to be paid the duties on merchandise contained in the following packages in conformity to the entry thereof of this date, which merchandise was imported in the bk. G. M. Stanwood, —— ——, master, from Barbadoes. Permission is accordingly hereby given to land the same, viz:

Marks.	Numbers.	Description of merchandise.	Send to appraiser's store.
A.....	582	Five hundred & eighty-two hhds. sugar, D. S. R.	25% odd.
J. B.	35	Thirty-five tierces sugar, D. S. R.....	Wh'f.
	50	Fifty barrels sugar, D. S. R.	

Custom-house, July 6th, 1888

C. O. ROCKWELL,
D. Collector.

L. R. MAY,
Naval Officer.

Fees, 20 cents.

88 NEW YORK, *August 11th*, 1888.

To Hon. Daniel Magone, collector of customs, port of New York.

SIR: We protest against your decision as to the rates and amount of duty to be paid on A—582 hhds. 35 tierces and 50 barrels of sugar imported by us per "G. M. Stanwood" from Barbadoes and entered in your office on or about the 6th day of July, 1888; consumption entry No. 101,915; liquidated August 8th, 1888. We claim that no lawful appraisement of the sugars has been made, and for the following reasons, to wit: 1st, that the packages of the sugars from which samples were drawn by the United States Government employés for polarization and appraisement were not and are not the lawful packages from which to take samples for the purpose stated, the same, without designation thereof on the invoice by the collector, having been selected with reference to marks not on the invoice, and that they were therefore selected contrary to and in violation of sections 2901 and 2939, Revised Statutes, which provide that the collector shall direct to be sent for examination and appraisement representative packages by designation thereof on the invoice—that is to say, according to the descriptive marks therein given of the packages. Section 2915, Revised Statutes, has reference solely to packages so designated from which samples of sugar shall be taken on which to determine the quality of the sugar. 2d, that the polariscope tests on which duties have been assessed and liquidated on the sugars in question were improperly and

89 illegally made or caused to be made by a person who has not been appointed an examiner for the port of New York by "the Secretary of the Treasury * * * on the nomination of the appraiser," as provided by section 2940, Revised Statutes. 3d, that the return of the appraiser and the liquidation of the collector do not show that the sugars in question have been sampled or appraised or tested by the polariscope for duty, and, 4th, that the person who has made or caused to be made the so-called polariscope tests is incompetent for such duties.

And we further claim that the sugars in question, which have been assessed or appraised and liquidated at a higher rate than two cents per pound, are entitled to be admitted and are only liable to duty under "Schedule E" of the tariff act of March 3d, 1883, at the

rate of two (2) cents per pound. We pay the excess of duty exacted under compulsion in order to obtain possession of our sugars.

Very truly yours,

HAVEMEYERS & ELDER SUGAR REF'G CO.
R. DE WARDENER, *Attorney.*

90 *Sample Ticket.*

(To be returned with samples within 48 hours from date or cause of delay reported.)

APPRAISER'S DEPARTMENT, 8TH DIVISION,
PORT OF NEW YORK, *July* 7, 1888.
No. of invoice, —.

Marks.	Nos.	Number and kind of packages.	Character of merchandise.
		H. & Elder.	
		"G. M. Stanwood."	
A	582	Hhds.	
"	35	Tcs.	
"	50	Bbls.	
		Dist. 2.	

Date of sampling, —— —, ——.
Name of sampler, —— ——.

91 PORT OF NEW YORK, U. S. EXAMINER'S OFFICE,
DISTRICT No. 2, *July* 11, 1888.

To the appraiser:

I transmit herewith — samples of sugar ex bk. G. M. Stanwood from Barbadoes, imported by H. & E. S. Ref. Co., being — per cent. of each of the following marks and drawn from the alternate * numbers thereof.

J. S. McELWEE, *Examiner.*

Marks.	Numbers sampled.†	Date sampled.	Sampler.	Remarks.
A 582 hhds.....	.....	July 11,'88	O'Donnell..	Muscovado.
" 35 tcs.....	12	.....	Tarraut.	
" 50 bbls.....	13	.....	McGuire.	
			Hayden.	

* "Odd" or "even," as the case may be.
† "1 and every 4th," or as the case may be.

I enclose attached the list of this cargo as separated & weighed.

NOTE.—In case of broken or damaged packages the numbers selected for sampling shall correspond as nearly as possible with those originally designated for that purpose. In case 25 per cent. and not exceeding 50 per cent. of a cargo be damaged a sample shall be taken from every other sound package, and if more than 50 per cent. be damaged a sample of every sound package shall be taken.

92 A A
S 37 H (9)
A A
C 23 H (8)
Lears 15 H (4)
A A
H H 18 H (5)
T G B 13 H (4)
R D S
K 12 H (2)
A C 8 H (2)
K
A 6 H (3)
H S H
L 14 H (4)
H F 5 H (2)
R B H
B 8 H (2)
F
L E 16 H (4)
C
R 14 H (4)
R
G 4 H (1)
S L
R 4 H (2)
Charnock 4 Hhd (1)
M
H H 1 H (1)
T
H F 5 H (2)
J I
T 13 H (4)
H I M
A 7 H (1)
P
C A 5 Hhd (2)
93 E P H 1 Hhd (1)
J A G
F 6 H (2)
O J
L 2 hhd (1)
H
C D 4 H (1)

A P
M 3 Hhd (2)
E 4 H (1)
T
R 2 H (1)
J R 1 H (1)
E H 4 H (2)
E
B 8 H (2)
C
C 5 H (2)
A A
V 17 H (6)
H G 9 H (3)
L P
R 6 H (2)
E
W V 4 H (1)
I R R
W 3 H (1)
S P
S 4 H (1)
R 1 H (1)
1 R
P P 1 H (1)
J H
B H 3 H (1)
B F 1 H (1)
1 H 1 H (1)
J F
G 2 H (1)
J M
P 4 H (1)

J H
V 10 H (3)
F A C
S 2 H (1)
S S
M 3 H (1)
L H 5 H (2)

Jno. Kelly 1 H (1)
H L 3 H (1)
T
C G 3 H (1)
H J 1
W 1 H (1)
S B M
S 1 H (1)
T
W 14 H (4)
R B
W 5 H (2)
Mullineux 5 H (2)
Claybrook 7 H (2)
L & B
L 7 H 2
T C
C 3 H (1)
1 C
A 1 H (1)
P T 2 H (1)
N F
C 1 H (1)
N F
S H 13 H (4)
J C
S V 3 H (1)
R H 1 H (1)
I H 2 H (1)

94 W D B
B 1 Hhd (1) (1)
P 3 Hhd (1)
J J W
C W 3 H (1)
J H
P 3 H (1)
M 6 H (1)
L T C
N 7 H (2)
E H 2 H (1)
C H S
C 5 (1)
C
S L 5 H (2)
P P 1 H (1)
R
S H 6 H (2)
[S] 1 H (1)

R G
R 5 H (2)
E G W
B 2 H (1)
G S
S 2 H (1)
N F
R D 10 H (2)
R M
L 2 H (1)
J W P
H 2 H (1)
Dukes 3 H (1)
C
B 6 H (2)
B B 1 H (1)
C C W
W 4 H (1)
W W S
L G 4 H (1)
J G
O 10 H (3)
J B
B F 4 H (1)
F W 2 H (1)
C G
1 1 H (1)
1 R R
S 2 (1)
Holders 1 H (1)
J J
R H 2 H (1)
C C L
Apes Hill 4 Hhd (1)
B V 2 Hhd (1)
J G
O 1 Hhd (1)
A P
M 4 Hhd (1)
S
E 4 Hhd (1)
W F
S 4 Hhd (1)
F O A
C G 11 Hhd (3)
1 R P
D 5 Hhd (2)

Tcs
Swans 24 Tcs 6
E 2 Tcs (1)

W W G
F 6 H (2)
W W G
S H 2 H (1)
E
K 1 Hhd (1)
T
S V 1 H (1)
M
V 1 H (1)
G A A
V H 1 Hhd (1)
Redland 3 Hhd (1)
H H C
K 1 Hhd (1)
Rugby 1 Hhd (1)
R
G V 4 Hhd (1)

K 3 Tcs (1)
T 1 Tc (1)
C 1 Tc (1)
A 3 Tcs (1)
C H S
R 1 Tc (1)

Bbls
A 50 bbls (13)
No. of samples of each lot marked thus ( )

Entry of Merchandise Imported by Havemeyers & Elder Sugar Refining Co. in the Str. "Saratoga," Whereof —— —— is Master, from Sagua La Grande & Havana.

NEW YORK, *July* —, 1888.

Marks.	Nos.	Packages and contents.	Centrifugals, @ 2.20 for 95°.	Muscovadoes, @ 2c. for 90°.	Invoice, where dated.	104,608
			Deposit duty.		Sagua la Grande, July 2d, 1888, as per con's certif's.	
					U. S. currency.	
H	1 No 1,028	Ten hundred & twenty-eight bags centrifugal sugar	333,701		@ 3 1-16 f. o. b.	$10,219 59
	"Santa Barbara:"				Havana, July 5th, 1888.	
H	1 No. 201	Two hundred and one hhds. muscovado sugar		302,331	@ 2¾ c. & f. $8,314 10 Fr'ght 422 10	$7,892 00
	"San Francisco:" P.					
H	1 No. 2,000	Two thousand bags centrifugal sugar	586,831		@ 3 15-16 c. & f. $19,438 78 Fr'g't 492 93	18,945 85
	"Salvador:"					
E	1 No. 972	Nine hundred and seventy-two bags centrifugal sugar	288,985		@ 3 1-16 f. o. b.	8,850 16
						$35,688 01
					Gross 36,603 04 Fr'g't 915 03	
					Sp. gold; $39,435.25.	35,688 01
	4,201	Pckgs.	1,209,517	302,331 Sp.		$45,907 60
			1,226,849	306,663 Am.	O.	

Havemeyers & Elder Sugar Ref'g Co.
Theo. A. Havemeyer.

HAVEMEYERS & ELDER SUGAR REF'G CO.
R. DE WARDENER, *Attorney.*

Brooklyn, Eastern District, stores.
To be withdrawn for consumption only.

2 June. 2 b. l. { 1,226,849, @ 2.20 ..... $26,990 68
306,663, " 2 ..... 6,133 26
$33,123 94

D. S. P.	2.	In.					
1,226	849	2 1-5	26,990 68	27,666, @ 2.20c	608 65	Am.	33,568 58
306	663	2	6,133 26	597,820, @ 2.24	13,391 17	D'y	33,123 94
			33,123 94	312,845, @ 1.96	6,131 76		
				589,342, @ 2.28	13,437 00	Mc.	444 64 H. S. B.
					33,568 58 H. S. B.		C. I., July 31, '88. Att'y.

96 [Endorsed:] 3877. 104,608. Import. Havemeyers & Elder Sugar Refining Co., No. 117 Wall street, New York. No. 561-'2. Saratoga. H. & E. S. R. Co. Appeal No. 8978. Filed Aug. 6, 1888. Protested Aug. 6, 1888. Sugar. E. H. L. Feb. 4, 1891. Exhibit 1 1.

DANIEL MAGONE, COLLECTOR, ETC.

53

97 *Oath of Owner in Cases where Merchandise Has Been Actually Purchased.*

I, R. de Wardener, stockholder & attorney of the Havemeyers & Elder Sugar Refining Co., do solemnly and truly swear that the entry now delivered by me to the collector of New York contains a just and true account of the goods, wares, and merchandise imported by or consigned to me in the str. Saratoga, whereof —— —— is master, — Sagua la Grande & Havana; that the invoice which I now produce contains a just and faithful account of the actual cost of the said goods, wares, and merchandise, including all costs of finishing the said goods, wares, and merchandise to their present condition, and no other discount, drawback, or bounty but such as has been actually allowed on the same; that I do not know or believe in the existence of any invoice or bill of lading other than those produced by me, and that they are in the state in which I actually received them; and I further solemnly and truly swear that I have not in the said entry or invoice concealed or suppressed anything whereby the United States may be defrauded of any part of the duty lawfully due on the said goods, wares, and merchandise; that the said invoice and the declaration thereon are in all respects true, and were made by the person by whom the same purports to have been made, and if at any time hereafter I discover any error in the said invoice or in the account now produced of the said goods, wares, and merchandise, or receive any other invoice of the
98 same, I will immediately make the same known to the collector of this district.

R. DE WARDENER.

Sworn to this 11 day of July, 1888, before me—

A. GERITZEN,
Deputy Collector.

[Written across the face:] Whf. 25 % even on hhds., whf. on bags.

99 Import.

Invoice of 1,028 bags centrifugal sugar, shipped by El Coude de Casa More, by order of Mess. Hidalgo & Co., of Havana, on board of the Am'n steamer "Saratoga," Curtis, m'r, bound to New York, via Havana, for account and risk of whom it may concern, and consigned to order Havemeyers & Elder Sugar Ref'g Co.

H 1–1028, 1,028 bags centrifugal sugar, 337,072–333,701 lb., n | $3\frac{1}{16}$c. lb., f. o. b. $10,219 59

E. E.

Sagua la G'de, 2 July, 1888.

EL COUDE DE CASE MORE,
P'r JOSE BOSQUE.

8 | 9. Triumvirate, 169 bags, test 95.60..... 2 24
8 | 9. Destino, 85 " " 95.00..... 2 20
8 | 9. Trinidad, 774 " " 95.80..... 2 24

[On margin:] Not above No. 13, D. S.

H. S. B.
Sugar as noted.
July 18, '88.

A. G. R.
D. STURGES.

Whf.

A. GERITZEN & CO.

Approved.

LEWIS McMULLEN, *Appraiser.*

100 I, Jose Bosque, att'y of the firm El Coude de Case More, of Sagua la Grande, do solemnly and truly declare that said firm is the duly authorized agent of the owners of the goods, wares, or merchandise in the within invoice mentioned and described; that the said invoice is in all respects true; that as to all the goods, wares, and merchandise therein mentioned it contains a true and full statement of the time when and the place where the same was purchased, the actual cost and quantity thereof, and of all charges thereon; that no discounts, bounties, or drawbacks are contained in said invoice except such as have been actually allowed thereon; that the currency in which said invoice is made out is the currency which was actually paid for the said goods, wares, and merchandise, and that no different invoice thereof has been or will be furnished to any one. I further declare that it is intended to make entry of the goods, wares, and merchandise mentioned in said invoice at the port of New York, via Havana, in the United States of America.

Dated at Sagua la Grande the 2 day of July, 1888.

JOSE BOSQUE.

(Signed in triplicate.)

101 CONSULATE OF THE UNITED STATES OF AMERICA,
SAGUA LA GRANDE, CUBA.

I, the undersigned, consul of the United States of America for Sagua la Grande and the dependencies thereof, do hereby certify that at Sagua la Grande, on this 2 day of July, A. D. 1888, the within invoice numbered 112, in which are mentioned and described certain 1,028 bags centrifugal sugar, amounting, with the charges thereon, to the gross sum of $10,219.59, was produce- to me by Jose Bosque, att'y of the firm of El Coude de Casa More, as agent of the owner of the goods, wares, and merchandise therein mentioned, who thereupon therein declared that it was intended to make entry of said goods, wares, and merchandise at the port of New York, via Havana, in the United States of America. I do further certify that I am satisfied that the person making the declaration hereto annexed is the person he represents himself to be; that he is a credi-

ble person, and that the statements made in the said declaration are true.

Witness my hand and seal of office, at Sagua la Grande, the day and year aforesaid.

D. M. MULLEN,
Consul of the United States.

[SEAL.]

102 Import. Duplicate.

Invoice of 201 hhds. & 2,972 sacks sug. shipped S. S. Saratoga, Curtis, m'r, bound to New York, for account and risk of whom it may concern, and consigned unto order Havemeyers & Elder Sugar Ref'g Co.

Musco sugars:

Not above No. 13, D. S., test 8870, $1.96.

Santa Barbara.

H. 1 # 201, 201 hhds., w'g
gross..... 343,558 lbs.
12 % tare.... 41,227

Net..... 302,331 lbs. a. $2\frac{7}{8}$c. p. lb... $8,314 10

Centrif. do.:

Not above No. 13, D. S., test 96.30, $2.28.

San Francisco, P.

H. 1 # 2,000, 2,000 sacks, w'g
gross.....592,759 lbs.
1 % tare,..... 5,928 "

Net.....586,831 lbs., a. $3\frac{5}{16}$c. p. lb.. 19,438 78

27,752 88

Less freight a. $2 p. hhd. & sacks a. 8c. p. 100 lbs., plus 5 % p'ge..... 915 03

Net..... 26,837 85

Salvador.

Not above No. 13, D. S., test 95.70, $2.24.

E. 1 # 792, 792 sacks, w'g
gross.....291,904 lbs.
1 % tare..... 2,919

Net.....288,985 lbs. a. $3\frac{1}{16}$c. p. lb., f. o. b. 8,850 16

Altogether, U. S. curr'y.....$35,688 01
Equivalent to Sp'h gold.....$39,435 25

HIDALGO & CO.

Havana, July 5th, 1888, at $10\frac{1}{2}$ p. —.
E. O. E.

Wh'f. 25 % even on hhds., wh'f on bags.

A. GERITZEN & CO.

Sugar as noted. H. S. B.
July 18, '88.

A. G. R.
D. STURGES.

Approved.

LEWIS McMULLEN, *Appraiser.*

103 I, G. Anido, attorney of the firm of Hidalgo & Co., of Havana, do solemnly and truly declare that we are the shippers of the goods, wares, or merchandise in the within invoice mentioned and described; that the said invoice is in all respects true; that as to all the goods, wares, and merchandise therein mentioned it contains a true and full statement of the time when and the place where the same were purchased, the actual cost and quantity thereof, and of all charges thereon; that no discounts, bounties, or drawbacks are contained in said invoice, except such as have been actually allowed thereon; that the currency in which said invoice is made out is the currency which was actually paid for the said goods, wares, and merchandise, and that no different invoice thereof has been or will be furnished to any one. I further declare that it is intended to make entry of the goods, wares, and merchandise mentioned in said invoice at the port of New York, in the United States of America.

Signed in triplicate. Dated at Havana the 5th day of July, 1888.

G. ANIDO.

104 CONSULATE GENERAL OF THE
UNITED STATES OF AMERICA, HAVANA, CUBA.

I, the undersigned, consul general of the United States of America for Havana and the dependencies thereof, do hereby certify that at Havana, on this 5th day of July, A. D. 1888, the within invoice, numbered 4565, in which are mentioned and described certain 201 hhds. & 2,972 sacks sugar, amounting, with the charges thereon, to the gross sum of $39,435.25 Sp'h gold (pesos), was produced to me by G. Anido, Esq., shipper of the goods, wares, and merchandise therein mentioned, who thereupon declared that it was intended to make entry of said goods, wares, and merchandise at the port of New York, in the United States of America. I do further certify that I am satisfied that the person making the declaration hereto annexed is the person he represent- himself to be; that he is a credible person, and that the statements made in the said declaration are in my opinion true.

Witness my hand and seal of office, at Havana, the day and year aforesaid.

[SEAL.]

RAMON O. WILLIAMS,
Consul General of the United States.

105 *Consumption Permit.*

D. S. R. PORT OF NEW YORK.

To the inspector:

We certify that Havemeyers & Elder Sugar Ref'g Co. has paid or secured to be paid the duties on merchandise contained in the following packages in conformity to the entry thereof of this date, which merchandise was imported in the str. Saratoga, —— —— master, from Sagua la Grande & Havana. Permission is accordingly hereby given to land the same, viz:

Marks.	Numbers.	Description of merchandise.	Send to appraiser's store.
H.....	#1028	Ten hundred & twenty-eight bags sugar.	Whf.
Santa Barbara, H.	#201	Two hundred & one hhds. sugar.	25% even on hhds. Whf. on bags.
San Francisco, H..	#2000	Two thousand bags sugar.	
Salvador, E.....	#972	Nine hundred & seventy-two bags sugar.	
J. B.		D. S. R.	

Custom-house, July 11th, 2888.

C. O. BROCKWELL, *Collector.*

H. M. GOURLY, *Naval Officer.*

106 NEW YORK, *August 6th*, 1888.

To Hon. Daniel Magone, collector of customs, port of New York.

SIR: We protest against your decision as to the rate and amount of duty to be paid on—

Salvador, 972 bags
S-n Francisco, 2,000 "
H., 1,028 "

of sugar imported by us per "Saratoga," from Havana, and entered in your office on or about the 11th day of July, 1888, consumption entry No. 104,608, and liquidated August 1st, 1888. We claim that no lawful appraisement of the sugar in question *have* been made and for the following reasons:

1st. We claim that the packages of the sugar of lot H., 1,028 bags, from which samples were drawn by the United States Government employés for polarization and appraisement were not and are not the lawful packages from which to take samples for the purpose stated, the same, without designation thereof on the invoice by the collector, having been selected with reference to marks not on the invoice, and that they were therefore selected contrary to and in violation of sections 2901 and 2939, Revised Statutes, which provides that the collector shall direct to be sent for examination and appraisment representative packages by designation thereof on the invoice—that is to say, according to the descriptive marks therein given of

the packages—section 2915, Revised Statutes, having reference
107 solely to packages so designated from which samples of sugar shall be taken on which to determine the quality of the sugar.

2d. We claim that the polariscope tests on which duties have been assessed and liquidated on all the sugars in question were improperly and illegally made or caused to be made by a person who has not been appointed an examiner for the port of New York by "the Secretary of the Treasury * * * on the nomination of the appraiser," as provided by section 2940, Revised Statutes, and we further claim that the sugars in question are entitled to be admitted and are only liable to duty under "Schedule E" of the tariff act of March 3d, 1883, at the rate of two and two-tenths ($2\frac{2}{10}$) cents per pound. We pay the excess of duty exacted under compulsion solely to obtain or retain possession of our sugars.

Very truly yours,

HAVEMEYERS & ELDER SUGAR REF'G CO.
R. DE WARDENER, *Attorney.*

108 PORT OF NEW YORK, U. S. EXAMINER'S OFFICE,
DISTRICT NO. 2, *July 13th*, 1888.

To the appraiser:

I transmit herewith 50 samples of sugar ex S. S. Saratoga, from Havana, imported by H. & E. S. Ref. Co., being 25 per cent. of each of the following marks, and drawn from the alternate * numbers thereof.

J. S. McELWEE, *Examiner.*

Marks.	Numbers sampled.†	Date sampled.	Sampler.	Remarks.
St. Barbara, 201 H.	50 3087	July 13, '88	O'Donnell . . Terrant. McGuire.	Muscovado.

* "Odd" or "even," as the case may be.
† "1 and every 4th," or as the case may be.

NOTE.—In case of broken or damaged packages the numbers selected for sampling shall correspond as nearly as possible with those originally designated for that purpose. In case 25 per cent. and not exceeding 50 per cent. of a cargo be damaged a sample shall be taken from every other sound package, and if more than 50 per cent. be damaged a sample of every sound package shall be taken.

109 PORT OF NEW YORK, U. S. EXAMINER'S OFFICE,
DISTRICT NO. 2, *July* 13, 1888.

To the appraiser:

I transmit herewith 211 samples of sugar ex S. S. Saratoga, from Cuba, imported by H. & E. S. Ref. Co., being 5 per cent. of each of the following marks, and drawn from the alternate * numbers thereof.

J. S. McELWEE, *Examiner.*

Marks.	Numbers sampled.†	Date sampled.	Sampler.	Remarks.
				Centrif.
1. Salvador, 972 bags.	52	July 13,'88	O'Donnell.. Terrant. McGuire. Hayden.	3,088
2. S. Francisco, 2,000 bags.	91	.....	.....	3,089
3. Triumvirate, 169 bags.	9	.....	.....	3,090
4. Destino, 85 bags.	12	.....	.....	3,091
5. Trinidad, 774 bags.	47	.....	.....	3,092
	211			

* "Odd" or "even," as the case may be.
† "1 and every 4th," or as the case may be.

NOTE.—In case of broken or damaged packages the numbers selected for sampling shall correspond as nearly as possible with those originally designated for that purpose. In case 25 per cent. and not exceeding 50 per cent. of a cargo be damaged a sample shall be taken from every other sound package, and if more than 50 per cent. be damaged a sample of every sound package shall be taken.

110 PORT OF NEW YORK, U. S. EXAMINER'S OFFICE,
DISTRICT No. 2, *Aug.* 18, 1888.

To the appraiser:

I transmit herewith — samples of sugar ex S. S. Saratoga, from ——, imported by H. & Elder, being — per cent. of each of the following marks, and drawn from the alternate * numbers thereof.

GILBERT, *Examiner.*

Marks.	Numbers sampled.†	Date sampled.	Sampler.	Remarks.
St. Julian ...	400 hhds., 100 samples.	.....	Field. Rahl. Leimbach. Twamby.	

* "Odd" or "even," as the case may be.
† "1 and every 4th," or as the case may be.

NOTE.—In case of broken or damaged packages the numbers selected for sampling shall correspond as nearly as possible with those originally designated for that purpose. In case 25 per cent. and not exceeding 50 per cent. of a cargo be damaged a sample shall be taken from every other sound package, and if more than 50 per cent. be damaged a sample of every sound package shall be taken.

111 *Certificate of Polariscopic Test of Sugar.*

U. S. LABORATORY, APPRAISER'S OFFICE,
NEW YORK, *July 5th*, 1888.

Sugar return, showing polariscopic test, under department circular No. 62, May 22, 1883.

Laboratory No.	1st test.	2d test.	3d test.	Test for classification.
2403	88.0 L.	88.2 S.	.. ..	88
2404	88.0 "	88.0 "	.....	88

CHAS. S. SOULE.
ROBERT RIGNEY.
G. LANDSMANN.
THEO'RE G. MORSE.

Approved:
J. T. LEARY,
Chemist in Charge.

112 *Certificate of Polariscopic Test of Sugar.*

U. S. LABORATORY, APPRAISER'S OFFICE,
NEW YORK, *July 5th*, 1888.

Sugar return, showing polariscopic test, under department circular No. 62, May 22, 1883.

Laboratory No.	1st test.	2d test.	3d test.	Test for classification.
2405	78.0 R.	76.5 M.	78.0 R.	78.00

CHAS. S. SOULE.
ROBERT RIGNEY.
G. LANDSMANN.
THEO'RE G. MORSE.

Approved:
J. T. LEARY,
Chemist in Charge.

113 *Certificate of Polariscopic Test of Sugar.*

U. S. LABORATORY, APPRAISER'S OFFICE,
NEW YORK, *July* 10, 1888.

Sugar return, showing polariscopic test, under department circular No. 62, May 22, 1883.

Laboratory No.	1st test.	2d test.	3d test.	Test for classification.
2704	94.5	94.2	.....	94.2
2705	96.3	96	.....	96
2706	95.4	95.4	.....	95.4
2707	94.9	95	.....	94.9
2708	95.9	95.6	.....	95.6
2709	95.5	95.3	.....	95.3
2710	96.8	96.6	.....	96.6
2711	94.8	94.5	.....	94.5

G. LANDSMANN.
CHAS. S. SOULE.

Approved:
J. T. LEARY,
Chemist in Charge of Polarization.

114 *Certificate of Polariscopic Test of Sugar.*

U. S. LABORATORY, APPRAISER'S OFFICE,
NEW YORK, *July* 10, 1888.

Sugar return, showing polariscopic test, under department circular No. 62, May 22, 1883.

Laboratory No.	1st test.	2d test.	3d test.	Test for classification.
2712	93.5	93.6	.....	93.5
2713	94.6	94.6	.....	94.6
2714	93	93	.....	93
2715	96.2	96.3	.....	96.2
2716	95	95.2	.....	95
2717	95.2	95.2	.....	95.2
2718	95	95	.....	95
2719	93.5	93.7	.....	93.5

ROBERT RIGNEY.
THEO'RE G. MORSE.

Approved:

J. T. LEARY,
Chemist in Charge of Polarization.

115 *Certificate of Polariscopic Test of Sugar.*

U. S. LABORATORY, APPRAISER'S OFFICE,
NEW YORK, *July* 12, 1888.

Sugar return, showing polariscopic test, under department circular No. 62, May 22, 1883.

Laboratory No.	1st test.	2d test.	3d test.	Test for classification.
2895	86.8 S.	86.6 L.	.....	86.6
2897	90.7	90.5	.....	90.5
2898	91.2	91	.....	91
2899	88 R.	88 M.	.....	88
2900	89.4	89.7	.....	89.4
2901	86.3	86.3	.....	86.3
2902	87.4	87.1	.....	87.1
2903	89.6 S.	89.5 L.	.....	89.5
2904	89	89	.....	89
2905	91.3	91	.....	91
2906	87.9	88	.....	87.9
2907	88.7	88.4	.....	88.4
2908	90.2	89.9	.....	89.9
2909	94.4 R.	90.7 M.	.....	90.4
2910	87	87.3	.....	87

CHAS. S. SOULE.
G. LANDSMANN.
ROBERT RIGNEY.
THEO'RE G. MORSE.

Approved:
J. T. LEARY, *Chemist in Charge of Polarization.*

116 *Certificate of Polariscopic Test of Sugar.*

U. S. LABORATORY, APPRAISER'S OFFICE,
NEW YORK, *July* 12, 1888.

Sugar return, showing polariscopic test, under department circular No. 62, May 22, 1883.

Laboratory No.	1st test.	2d test.	3d test.	Test for classification.
2912	92 R.	92.5 M.	.....	92
2913	86.8	86.9	.....	86.8
2914	90.9	90.9	.....	90.9

ROBERT RIGNEY.
THEO'RE G. MORSE.

Approved:
J. T. LEARY, *Chemist in Charge of Polarization.*

117 *Certificate of Polariscopic Test of Sugar.*

U. S. LABORATORY, APPRAISER'S OFFICE,
NEW YORK, *July* 12, 1888.

Sugar return, showing polariscopic test, under department circular No. 62, May 22, 1883.

Laboratory No.	1st test.	2d test.	3d test.	Test for classification.
2916	91 S.	90.7 L.	.....	90.7
2917	91.8	91.5	.....	91.5
2919	90.3	90	.....	90
2921	88.7	88.4	.....	88.4
2922	87	87	.....	87
2923	90.8	90.5	.....	90.5
2936	88	87.8	.....	87.8
2937	87	87	.....	87
2938	87.8	88	.....	87.8
2939	87	86.9	.....	86.9
2940	86.8	86.8	.....	86.8
2918	89.5	89.2	.....	89.2

CHAS. S. SOULE.
G. LANDSMANN.

Approved:
J. T. LEARY, *Chemist in Charge of Polarization.*

118 *Certificate of Polariscopic Test of Sugar.*

U. S. LABORATORY, APPRAISER'S OFFICE,
NEW YORK, *July* 12, 1888.

Sugar return, showing polariscopic test, under department circular No. 62, May 22, 1883.

Laboratory No.	1st test.	2d test.	3d test.	Test for classification.
2925	86.3 R.	86.4 M.	.....	86.3
2927	89.6	89.9	.....	89.6
2928	90.3	90.2	.....	90.2
2929	90	90.3	.....	90
2930	90.8	90.8	.....	90.8
2931	85.7	85.8	.....	85.7
2932	87.3	87.6	.....	87.3
2941	91	91	.....	91
2942	88.5	88.5	.....	88.5
2943	88	87.9	.....	87.9

ROBERT RIGNEY.
THEO'RE G. MORSE.

Approved:
J. T. LEARY, *Chemist in Charge of Polarization.*

119 *Certificate of Polariscopic Test of Sugar.*

U. S. LABORATORY, APPRAISER'S OFFICE,
NEW YORK, *July* 12, 1888.

Sugar return, showing polariscopic test, under department circular No. 62, May 22, 1883.

Laboratory —.	1st test.	2d test.	3d test.	Test for classification.
2920	90.6 S.	89.7 L.	90 S.	89.7
2924	89.6	89	89	89
2933	90.3	90	.....	90
2934	87.6	87.5	.....	87.5
2935	85	85.2	.....	85
2950	90	90	.....	90
2951	89.3	89.4	.....	89.3
2952	90.6	90.3	.....	90.3
2953	90.2	90.2	.....	90.2
2954	89	88.9	.....	88.9
2955	89.9	89.8	.....	89.8
2956	90.3	90	.....	90

G. LANDSMANN.
CHAS. S. SOULE.

Approved:

J. T. LEARY,
Chemist in Charge of Polarization.

120 *Certificate of Polariscopic Test of Sugar.*

U. S. LABORATORY, APPRAISER'S OFFICE,
NEW YORK, *July* 12, 1888.

Sugar return, showing polariscopic test, under department circular No. 62, May 22, 1883.

Laboratory No.	1st test.	2d test.	3d test.	Test for classification.
2911	89 R.	89.5 M.	89.5 M.	89.5
2915	90	90.5	90 R.	90
2926	88	88.6	88.9 M.	88.6
2944	88.3	88.3	.....	88.3
2945	90.5	90.4	.....	90.4
2946	90.3	90.3	.....	90.3
2947	89.7	90	.....	89.7
2948	90	90	.....	90
2949	84.6	84.7	.....	84.6
2957	90.2	90.2	.....	90.2
2958	88.2	88.5	.....	88.2
2960	85.6	85.6	.....	85.6
2961	90.3	90.6	... .	90.3
2962	86.7	86.8	.....	86.7
2973	82.4	82.7	.....	82.4
2974	92	91.8	.....	91.8
2975	88.4	88.3	... .	88.3
2976	91.5	91.7	... .	91.5
2977	87.8	88	.....	87.8

ROBERT RIGNEY.
THEO'RE G. MORSE.

Approved:

J. T. LEARY,
Chemist in Charge of Polarization.

121 *Certificate of Polariscopic Test of Sugar.*

U. S. LABORATORY, APPRAISER'S OFFICE,
NEW YORK, *July* 13, 1888.

Sugar return, showing polariscopic test, under department circular No. 62, May 22, 1883.

Laboratory No.	1st test.	2d test.	3d test.	Test for classification.
2896	90 S.	89.7 L.	.....	89.7
2963	93	92.7	.....	92.7
2964	94.1	93.9	.....	93.9
2965	90	89.9	.....	89.9
2966	88.3	88	.....	88
2967	82.7	82.6	.....	82.6
2968	92	92	.....	92
2969	89.4	89.3	.....	89.3
2970	88	88	.....	88
2971	90.3	90	.....	90
2972	91	90.7	.....	90.7
2978	91.5	91.2	.....	91.2
2979	84.6	84.5	.....	84.5
2980	90.6	90.3	.....	90.3

G. LANDSMANN.
CHAS. S. SOULE.

Approved:
J. T. LEARY, *Chemist in Charge of Polarization.*

122 *Certificate of Polariscopic Test of Sugar.*

U. S. LABORATORY, APPRAISER'S OFFICE,
NEW YORK, *July* 13, 1888.

Sugar return, showing polariscopic test, under department circular No. 62, May 22, 1883.

Laboratory No.	1st test.	2d test.	3d test.	Test for classification.
2981	89.9 S.	90 L.	.....	89.9
2982	91.3	91	.....	91
2983	91	90.7	.....	90.7
2984	89.3	89.3	.....	89.3
2986	88.3	88.3	.....	88.3
2987	89.2	89	.....	89
2988	85	85.2	.....	85
2989	89.3	89.3	.....	89.3

CHAS. S. SOULE.
G. LANDSMANN.

Approved:
J. T. LEARY, *Chemist in Charge of Polarization.*

123 *Certificate of Polariscopic Test of Sugar.*

U. S. LABORATORY, APPRAISER'S OFFICE,
NEW YORK, *July* 13, 1888.

Sugar return, showing polariscopic test, under department circular No. 62, May 22, 1883.

Laboratory No.	1st test.	2d test.	3d test.	Test for classification.
2985	92.4 S.	92 L.	92.7 S.	92.40
3024	96.4	95.7	96	95.7

G. LANDSMANN.
ROBERT RIGNEY.
THEO'RE G. MORSE.
CHAS. S. SOULE.

Approved:
J. T. LEARY, *Chemist in Charge of Polarization.*

124 *Certificate of Polariscopic Test of Sugar.*

U. S. LABORATORY, APPRAISER'S OFFICE,
NEW YORK, *July* 13, 1888.

Sugar return, showing polariscopic test, under department circular No. 62, May 22, 1883.

Laboratory No.	1st test.	2d test.	3d test.	Test for classification.
2990	89.7 R.	89.6 M.	....	89.6
2991	90.4	90.5	.....	90.4
2992	90.3	90.4	.....	90.3
2993	89.4	89.7	.....	89.4
2994	90.5	90.8	.....	90.5
2995	88.3	88.5	.....	88.3
2996	90	90	.....	90
2997	85.7	85.8	.....	85.7
2998	89	88.9	.....	88.9
2999	83.9	84	.....	83.9
3000	89.6	89.6	.....	89.6
3001	90.5	90.8	....	90.5
3002	87.5	87.8	.....	87.5
3003	89.3	89.6	.....	89.3
3004	88.5	88.6	.....	88.5
3005	93.2	93.3	....	93.2

ROBERT RIGNEY.
THEO'RE G. MORSE.

Approved:
J. T. LEARY, *Chemist in Charge of Polarization.*

125 *Certificate of Polariscopic Test of Sugar.*

U. S. LABORATORY, APPRAISER'S OFFICE,
NEW YORK, *July* 13, 1888.

Sugar return, showing polariscopic test, under department circular No. 62, May 22, 1883.

Laboratory No.	1st test.	2d test.	3d test.	Test for classification.
3006	89.7	90	.....	89.7
3007	90.4	90.7	.....	90.4
3008	87.7	87.6	.....	87.6
3009	87.7	88	.....	87.7
3010	87.5	87.3	.....	87.3
2959	88	88.5	88.2 R.	88.2

ROBERT RIGNEY.
THEO'RE G. MORSE.

Approved:
J. T. LEARY,
Chemist in Charge of Polarization.

126 *Certificate of Polariscopic Test of Sugar.*

U. S. LABORATORY, APPRAISER'S OFFICE,
NEW YORK, *July* 14, 1888.

Sugar return, showing polariscopic test, under department circular No. 62, May 22, 1883.

Laboratory No.	1st test.	2d test.	3d test.	Test for classification.
3087	88.7	89	.....	88.7
3088	96	95.7	.....	95.7
3089	96.6	96.3	.....	96.3
3090	95.6	95.7	.....	95.6
3091	95.2	95	.....	95

G. LANDSMANN.
CHAS. S. SOULE.

Approved:
J. T. LEARY,
Chemist in Charge Polarization.

127 *Certificate of Polariscopic Test of Sugar.*

U. S. LABORATORY, APPRAISER'S OFFICE,
NEW YORK, *July* 14, 1888.

Sugar return, showing polariscopic test, under department circular No. 62, May 22, 1883.

Laboratory No.	1st test.	2d test.	3d test.	Test for classification.
3092	95.9	95.8	.....	95.8

ROBERT RIGNEY.
THEO'RE G. MORSE.

Approved:
J. T. LEARY,
Chemist in Charge of Polarization.

Tests of sugars other than those of plaintiffs were on the foregoing returns, but were omitted as irrelevant.
Similar ones were made as to the other importations.

128 Plaintiff's counsel read in evidence from the Treasury regulations of 1884 relating to the appraisement of merchandise, and from the regulations dated May 22, 1883, of the Secretary, 88. D. 5725, in relation to the sampling and classification of sugars under act of March 3, 1883:

Art. 448. The collector will designate on the invoice at least one package of every invoice and one package at least of every ten packages of imported merchandise, and a greater number should it be deemed necessary by himself or the naval officer or either of the appraisers, and order the same to the public store to be opened, examined, and appraised. This examination can in no case be dispensed with. R. S., 2901. As to the port of New York, see R. S., 2939.

Art 449. The collector, having designated on the invoice the packages for examination and appraisement and marked distinctly thereon the rate at which duties have been assessed on the several articles therein specified, will in every case transmit the invoice by an official messenger to the appraisers and order the packages so designated to the public store for such examination and appraisement.

If the articles are bulky he will direct their examination on the wharf or other safe and suitable place to be designated by him for that purpose. 10 Wallace, 449.

If the merchandise be such as, by commercial usage, is bought and sold by samples, or where, by such usage, the character and quality of the merchandise are so determined, the appraisement

may, in such cases, be made by samples, due care being taken that they are properly and fairly selected from the packages designated on the invoice by the collector and identified as such. 1 Clifford, 492.

Matches will be examined at the appraiser's store. S., 6081.

Art. 450. In no case can the examination of imported merchandise be made at the residence of the importer or at any other place not contemplated by the foregoing article, unless by special permission from the collector of customs, in which the appraiser concurs. Such permission will be given by the collector in person only or, in his absence, by his special deputy, and not otherwise than in exceptional and extraordinary cases, as, for example, when articles are of a very fragile character or are imported for the personal use of the importer, and not as merchandise, or when they might be exposed to injury by being opened, examined, and repacked at the appraiser's store.

Before granting such permission the collector will require the importer to deposit with him an amount sufficient to cover the expense, if any, that may be incurred in the examination of the merchandise at the place designated. Circular, December 15, 1881.

129 Art. 451. A thorough examination must then be made, under the direction of the appraisers, in connection with the specifications and description in the invoice, to ascertain whether the merchandise corresponds in quantity and description with the invoice and whether the value declared on the entry corresponds with the requirements of law.

(5725.)

TREASURY DEPARTMENT, *May* 22, 1883.

The following regulations for the sampling and classification of sugars and molasses under the provision of the tariff act approved March 3, 1883, and for allowances for damage are prescribed for the guidance of customs officers.

CHAS. J. FOLGER, *Secretary.*

Collectors of customs and others.

2. In regard to sugar in hogsheads, tierces, barrels, and boxes the packages of each mark shall be numbered from one upwards as discharged from the vessel or weighed, the numbers to be scored on the marked head of the package, and at the same time a double cross-mark, thus, ‖ shall be scored just above and to the right of the number to designate the "sample" packages.

3. The packages so designated, unless sampled as discharged, shall be placed in tiers on the wharf, with a space four feet six inches between them, the marked and numbered heads facing the said space so as to be readily seen by the sampler.

4. The collector will be held solely responsible for the proper

designation of sample packages, as above indicated, and, when necessary, will require the same to be placed on the wharf as herein provided in order to convenient sampling. These duties will be performed under the supervision of an inspector or of a weighing officer, but in the latter case the weighing shall commence as soon as a sufficient number of packages have been discharged to render it probable that the work may go on continuously until the cargo is completed.

5. The packages so designated for sampling will be indicated in the inspector's discharging book or in the weigher's dock book by the letter "S" opposite the number or weight of the package. In the case of resamples, as hereinafter provided, the letters "R S" shall be so placed.

6. In regard to sugar in hogsheads and other packages, as above designated, 25 per cent. of each mark shall be sampled, unless the mark contain ten or less packages, when 50 per cent. shall be sampled; and the collector shall indorse on the permit, for the guidance of the discharging inspector, and also on the invoice, for the information of the appraiser, as follows: "Sample 25 per cent. alternate even (or odd) numbers," "Sample 50 per cent. even (or odd) numbers," as the case may be, the collector varying the order, in his discretion, so as to prevent possible collusion.

7. The sample packages shall be selected in regular order as numbered, as, for example, when 25 per cent. is to be sampled, Nos. 2, 6, 10, &c., or Nos. 1, 5, 9, &c., will be taken, according as the alternate even or odd numbers are designated on the permit; when 50 per cent. is to be sampled, Nos. 2, 4, 6, &c., or Nos. 1, 3, 5, &c., will be taken, according as the even or odd numbers are designated on the permit; but when there are broken or damaged packages those numbers shall be selected which most nearly correspond with those designated on the permit. If 25 per cent. and not over 50 per cent. of any mark be damaged, then 50 per cent. of the sound packages shall be sampled. If over 50 per cent. be damaged, then all the sound packages shall be sampled.

13. Of sugar in bags and ceroons, 5 per cent., and in mats, 2½ per cent., of each mark shall be sampled, to secure which the sugar, when discharged, shall be separated by marks as far as possible.

14. The selection of the sample packages shall be made by the collector, as in the case of other sugars, when the cargo is discharged or weighed, every twentieth draft in the case of bags and ceroons and every fortieth in the case of mats being taken, care being observed to take no broken or damaged packages and to maintain the same number of packages to the draft throughout the entire cargo.

15. The packages so selected shall be stencilled in large characters "U. S. sample" in the presence of the inspector or weighing officer, and shall be placed lengthwise in single or double tiers, as may be most convenient, so that the stencil mark as above may be readily seen by the sampler and the packages be easily accessible for sampling.

19. When the packages for original sample are selected, and in order to secure more correct and satisfactory results in case a re-

sample is desired, every alternate twentieth draft in the case of bags and ceroons, beginning with the tenth, and every alternate fortieth in the case of mats, beginning with the twentieth, shall be placed aside, as before described for the original sample, and marked in stencil "U. S. resample." The boring or cutting by merchants' samplers of packages designated for sample or resample, as herein provided, until after the Government samples have been taken is strictly prohibited.

It is agreed by counsel that synopsis of Treasury decisions No. 5725, dated May 22, 1883, may be read in the argument as part of the record.

131 The district attorney read in evidence from the regulations of 1884 as follows:

Art. 1362. Principal officers of customs are authorized by law to employ within their respective jurisdictions, with the approval of the Secretary of the Treasury, such number of proper persons as the service may require as deputy collectors, deputy naval officers and deputy surveyors, warehouse superintendents and storekeepers, examiners, inspectors, weighers, gaugers, measurers, clerks, and laborers, the nominations of persons to be so employed being transmitted by collectors. The deputies so appointed are declared by law to be officers of the customs, and their acts will be respected accordingly. R. S., 2621, 2630, 2631, and 2632.

Art. 1417. Examiners of merchandise shall attach their initials to all classifications or packages examined by them, but appraisers shall sign their full names to all reports and submit their official reports in writing.

EXHIBIT F.

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
WASHINGTON, D. C., *August 16th*, 1888.

Collector of customs, New York, N. Y.

SIR: Referring to your letter of the 3rd instant, I have to state that your order of the 5th ultimo, requiring cargoes of sugar to be separated by plantation marks, being in the opinion of the department in conformity with the regulations governing the classification of imported sugars, is hereby approved.

For your information it is stated that the honorable the Secretary of State has this day been requested to issue instructions to consular officers in the countries from which sugars are imported into the United States to require all invoices of sugars and molasses presented for certification to specify the various kinds of sugars, whether centrifugal, muscovado, or other, the plantation marks, and the number of packages and quantity of each mark.

Respectfully yours,

I. H. MAYNARD,
Assistant Secretary.

J. A. J.

132 EXHIBIT G.

(G. W. M.)

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
WASHINGTON, D. C., *September* 1*st*, 1888.

Collector of customs New York, N. Y.

SIR: Referring to department letter to you of the 16th ultimo, approving your order of the 5th of July last, requiring cargoes of sugar to be separated by plantation marks, you are informed that upon further consideration of the subject and in view of representations which have been made by the Havermeyers and Elder Sugar Refining Company that the enforcement of said order involves great delay in the delivery of sugar and a large additional expense to the Government as well as to the importer without corresponding benefit in the way of additional protection to the interests of the revenue, which representations appear to be confirmed by the communication of U. S. Weigher Jno. O'Brien, addressed to the surveyor at your port on the 21st of July last and transmitted by you to the department on the 3d ultimo.

I have concluded to modify the official letter to you of the 16th ultimo, above referred to, to the extent of leaving it to your discretion when to require the separation and sampling by plantation marks of cargoes of sugars in order to afford better protection against fraudulent practices.

You will hereafter govern your action accordingly.

Respectfully yours, C. S. FAIRCHILD, *Secretary.*

EXHIBIT H.

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
WASHINGTON, D. C., *May* 25, 1883.

Messrs. Thomas G. Rice & R. K. Darrah, U. S. appraisers, Boston, Mass.

GENTLEMEN: The following nominations of examiners to test sugars by the polariscope, at a compensation of $1,200 per annum each, new offices, submitted in your letter of the 23d inst., are hereby approved, the appointment in each case to take effect from date of oath.

—— —— and Charles S. Soule, No. 43.

Very respectfully,

(Signed) H. F. FRENCH,
Acting Sec'y.

133 Both parties having rested, plaintiff's counsel moved that a verdict be directed for the plaintiffs. The court denied the motion, and plaintiff's counsel duly excepted.

On motion of the defendant's counsel, the court then directed a

verdict for defendant; to which ruling the plaintiff's counsel duly excepted.

And inasmuch as the matters aforesaid do not appear on the record or otherwise than by this bill of exceptions, the plaintiff's counsel have caused the same to be made, and it was duly settled on the 24th day of June, 1891.

E. HENRY LACOMBE,
Circuit Judge.

Correct.
EDW'D MITCHELL,
U. S. Att'y, for Pl'ff.

(Endorsed:) U. S. circuit court, southern district of New York. Havemeyers & Elder Sugar Refining Company *vs.* Daniel Magone. Plaintiff's bill of exceptions. Stanley, Clarke and Smith, attorneys for plaintiff, 120 Broadway, N. Y.

134 Supreme Court of the United States.

HAVEMEYERS & ELDER SUGAR REFINING COMPANY, Plaintiff in Error, *vs.* DANIEL MAGONE, Defendant in Error. } Assignment of Errors.

Afterwards, to wit, on the 23rd day of July, in the same term, before the justices of the said court, at the Capitol, in Washington, come the said plaintiff in error, by Stanley, Clarke & Smith, its attorneys, and say that in the record and proceedings aforesaid there is manifest error in this, to wit, that by the record aforesaid it appears that the judgment aforesaid, in form aforesaid given, was given for the said defendant in error against the said plaintiff in error, whereas by the law of the land the said judgment ought to have been given for the said plaintiff against the said defendant; also as error the direction of a verdict for the defendant.

And the said plaintiff pray that the judgment aforesaid, for the error aforesaid and other errors in the record and proceedings aforesaid, may be reversed, annulled, and altogether held for nothing, and that it, the said plaintiff, may be restored to all things which it has lost by occasion of said judgment, &c.

STANLEY, CLARKE & SMITH,
Attorneys for Plaintiff in Error.

135 [Endorsed:] 13626. United States Supreme Court. Havemeyers & Elder Sugar Refining Company, plaintiff in error, *vs.* Daniel Magone, defendant in error. Assignment of error. Stanley, Clarke & Smith, attorneys for plaintiff in error. Due service of a copy of the within assignment of error is hereby admitted this 25th day of June, 1891. Edward Mitchell, U. S. att'y, attorney for defendant in error. Original filed Jun- 25, 1891.

136 Supreme Court of the United States.

HAVEMEYERS & ELDER SUGAR REFINING COMPANY, Plaintiff in Error,
vs.
DANIEL MAGONE, Defendant in Error.
} Joinder in Error.

And afterwards, to wit, on the twenty-third day of July, 1891, the said defendant in error, by Edward Mitchell, U. S. att'y, his attorney, comes here into court and says that there is no error either in the record or proceedings aforesaid or in the giving of the judgment aforesaid.

And he prays that the said Supreme Court, before the justices thereof, now here, may proceed to examine as well the record and proceedings aforesaid as the matters aforesaid above assigned for error, and that the judgment aforesaid, in form aforesaid given, may be in all things affirmed, &c.

EDWARD MITCHELL,
U. S. Att'y, Attorney for Defendant in Error.

137 [Endorsed:] 13626. United States Supreme Court. Havemeyers & Elder Sugar Refining Company, plaintiff in error, *vs.* Daniel Magone, defendant in error. Joinder in error. Edward Mitchell, U. S. att'y, attorney for defendant in error. Due service of a copy of the within joinder in error is hereby admitted this 26th day of June, 1891. Stanley, Clarke & Smith, attorney- for plaintiff in error. To Stanley, Clarke & Smith, Esqs., attorney- for plaintiff in error. Original filed Jun- 26, 1891.

138 Circuit Court of the United States of America for the Southern District of New York, in the Second Circuit.

HAVEMEYERS & ELDER SUGAR REFINING COMPANY
vs.
DANIEL MAGONE.
} Bond for Costs.

Know all men by these presents that we, H. W. Combs, of 56 Wall street, New York city, and James Burt, residing at 253 West 45th street, New York city, are held and firmly bound unto the above-named Daniel Magone in the sum of two hundred and fifty dollars, to be paid to the said Daniel Magone; for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated the 25th day of June, in the year of our Lord one thousand eight hundred and ninety-one.

Whereas the above-named plaintiff in error has prosecuted its writ of error to the Supreme Court of the United States to reverse the judgement rendered in the above-entitled suit by the judge of

the circuit court of the United States for the southern district of New York:

Now, therefore, the condition of this obligation is such that if the above-named plaintiff in error shall prosecute its said writ of error to effect and answer all damages and costs if said plaintiff in error fail to make said writ of error good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

H. W. COMBS. [SEAL.]
JAMES BURT. [SEAL.]

Sealed and delivered and taken and acknowledged this 25 day of June, 1891, before me—

W. M. SMALLWOOD,
Notary Public, No. 383, *N. Y. Co.*

139 [Endorsed:] 13626. U. S. circuit court, southern district of New York. Havemeyers & Elder Sugar Refining Company *vs.* Daniel Magone. Bond for costs on writ of error. Approved as to form, amount, and sufficiency of sureties June 25, 1891. E. Henry Lacombe. Original filed Jun- 25, 1891.

UNITED STATES OF AMERICA, } ss:
Southern District of New York, }

H. W. Combs and James Burt, being duly sworn, depose and say that they are each worth the sum of two hundred and fifty dollars over and above all his just debts and liabilities.

H. W. COMBS.
JAMES BURT.

Sworn to this 25th day of June, A. D. 189–, before me—

W. M. SMALLWOOD,
Notary Public, No. 383, *N. Y. Co.*

[SEAL.]

140 UNITED STATES OF AMERICA, ss:

To Daniel Magone, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the 23rd day of July, eighteen hundred and ninety-one, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the southern district of New York, wherein Havemeyers & Elder Sugar Refining Company is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Dated June 25, 1891.

E. HENRY LACOMBE.

141 [Endorsed:] E. & A. B. 1010. 13626. U. S. Supreme Court. Havemeyers & Elder Sugar Refining Company, plaintiff in error, against Daniel Magone, defendant in error. Citation. Stanley, Clarke & Smith, attorneys for plaintiff in error. Due service of a copy of the within citation is hereby admitted this 25 day of June, 1891. Edward Mitchell, U. S. att'y & attorney for defendant in error. P. U. S. circuit court. Filed Jun- 25, 1891. John A. Shields, clerk. 10 ch.

Endorsed on cover: Case No 14,765. S. New York C. C. U. S. No. 243. Havemeyers & Elder Sugar Refining Company, plaintiff in error, *vs.* Daniel Magone, collector of the port of New York. Filed July 23, 1891.

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Supreme Court of the United States.

OCTOBER TERM, 1894.

HAVEMEYERS & ELDER SUGAR REFINING CO. vs. DANIEL MAGONE.	No. 243.

STATEMENT.

In 1888, between June 8 and October 16, the plaintiff corporation imported and entered at New-York many bags, hogsheads and tierces of foreign sugars, below No. 13 Dutch standard in color. (Rec. 5-6 and 10, fol. 18.)

The tariff of 1883 subjected all sugars above No. 13 to classification and duty wholly according to the Dutch standard in color, and all below this number to duty on their polariscopic test (22 Stats. 502) which was required to be, and was, indicated upon the invoices and entries. (Rec. 10, fols. 18, 19.)

The estimated duties were laid and paid conformably to the test so declared upon the invoice and entry which, as in the case of all invoices of merchandise, is taken to be correct, and governs, unless found to be incorrect by subsequent examination and proceedings had and conducted in obedience to the requirements of law, which are minute and specific upon this subject.

The duties upon the importations in suit were increased beyond the estimated amounts indicated by the

invoices and entries; against which increase and the exaction thereof the plaintiff seasonably protested and duly took all steps necessary to recover the excess, if found illegal. (Rec. 10, folio 18.)

The grounds of recovery assigned in the protests were that the examinations and testings, whereby the additional amounts were assessed and collected, were made by unauthorized persons of samples illegally and improperly selected; which were neither obtained nor proceeded with in the manner provided by law. (Rec. 42, fol. 75; 48, fol. 88; 58, fol. 106.)

The applicable sections of the Revised Statutes are stated in these protests. *(Ibid.)*

FIRST. With reference to the selection of the samples to be examined:—

Sec. 2901 says, "The collector shall *designate on the invoice* at least one *package* of every invoice, and one *package* at least of every ten *packages* of merchandise, and a greater number should he or either of the appraisers deem it necessary, imported into such port to be opened and appraised, and shall order the *package* so designated to the public stores for examination." . . .

Sec. 2915 demands that "The Secretary of the Treasury shall, by regulation, prescribe *and require* that samples from *packages* of sugar shall be taken, by the *proper* officers, in such manner as to ascertain the true quality of SUCH sugar." . . .

Sec. 2939 declares "The collector of the port of New-York shall not, under any circumstances, direct to be sent for examination and appraisement less than one *package* of every invoice, and one *package* at least out of every ten packages," etc. . . .

The method actually pursued with our sugars is shown by the record to be this:—

The collector, per his deputy—instead of designating "upon the invoice" any "packages" to be sent to the appraisers' store, to be there examined—by writing

"whf." upon the invoices, directed samples to be taken upon the wharf where the vessels were unloaded; adding "25 % odd" or "25 % even.". (Rec. 21 to 24.) Whatever this might naturally be conjectured to mean, as a matter of fact not *more* than one-twentieth were sampled for testing, with an equal number (perhaps) for re-samples. *(Id.* 11 to 15.*)*

The uncertainty as to number of *packages* sampled arises from the fact that the sampling was by "drafts," consisting of different numbers of bags, depending upon their size. *(Ib.)*;—"a draft meaning the number of bags contained on the wooden bottom which is suspended, and from which the weight is taken." *(Id.* 13, fol. 23.*)*

Between June 23 and Sept. 6, 1888 *(Id.* 10, fol. 19, and 13, fol. 24*)*—which period covers a large proportion of the liquidations of which we complain *(Id.* 5 and 6, last column*)*—the sampling was by "plantation-marks," and not by any mark or designation of or upon the invoices. *(Id.* 11 to 15; 20 to 24; specially 12, fol. 21.*)*

That our objection to this separation, according to marks supposed to indicate the plantation upon which the sugar was produced, was not technical or ill-founded, but represented an actual grievance, is evidenced by the Secretary's letter of Sept. 1st, 1888, discontinuing it, as involving great delay, and large additional expense both to the Government and to the importer. *(Id.* 75.*)*

The idea of such separation originated with Deputy-Collector McClelland in June, 1888, *(Id.* 10, 11; fol. 19*)* but did not come to the Secretary's knowledge until August, 1888, nor receive his approval until the sixteenth of that month *(Id.* 74, fol. 131, Ex. F*)* and was disapproved Sept. 1, 1888. *(Id.* 75, fol. 132, Ex. G.*)*

Commencing with this epistolary instruction of the deputy-collector, June 23, 1888, and in obedience thereto, the plaintiff's sugars were separated "according to their plantation-marks, which were on the hogs-

heads, tierces, barrels, bags, etc., as they were unladen from the vessels on the wharf, those of one plantation-mark being placed in one pile together, and so as to each plantation-mark." *(Id.* 11, bottom, and 12, top.*)*

This "separation by plantation-marks was done before weighing; afterward they were weighed and sampled according to the plantation-marks." *(Id.* 12, top.*)*

There was a difference between the sampling of hogsheads, etc., and of bags. *(Id.* 12.*)* It will be noticed that the endorsement of "25% odd," or "even," was only made with reference to *hogsheads*, tierces, or barrels. *(Id.* 22 to 24, Ex. 55.*)* A different proportion of *bags* was sampled. *(Id.* 12.*)*

"In sampling between June 23 and September 6, all the *bags* of one plantation-mark were put in one pile, and those of another plantation-mark in another pile, and so on; and of the bags, *five per cent* of each *pile* were sampled in the following manner: As the bags came off the ship, those of one plantation-mark were placed on the weigher's scale; from *six* to *eight* were weighed at one time; each weighing constituted a *draft*. When sufficient of one plantation-mark for a weighing had come off the ship and were on the scales, they were weighed and set aside and marked as samples. Then the weighing was continued, and the tenth *draft* was marked and set aside as re-samples, and the twentieth *draft* was marked as samples, and so on." *(Id.* 12, fol. 21.*)*

"If the drafts are of centrifugal sugar, weighing three or four hundred pounds, we can only weigh *three* in a draft. If smaller, we can *sometimes* weigh *eight* in a draft." *(Id.* 13, fol. 23.*)*

"Every twentieth draft constitutes this *sample draft*. Every twentieth draft that we weigh constitutes the sample draft, and the alternate twentieth constitutes the re-sample draft. If the bags are small bags, we take more bags to the draft; if they are heavy bags, we take less." *(Ibid.)*

"As to the *hogsheads*, if there were five hundred hogsheads, the first hogshead, of a particular plantation-mark, coming out of the ship was weighed and

called 'No. 1,' and set aside as a sample hogshead; then the fifth hogshead *having that mark* was marked 'No. 2,' and so with the ninth, thirteenth, seventeenth, etc., until the entire twenty-five per centum was laid out." *(Id.* 14, 15; fols. 25 and 26.*)* "With respect to the hogsheads, and all wooden packages, boxes, barrels, tierces, etc., the collector would designate '25% odd' or '25% even,' as the case might be." *(Id.* 14 bottom.*)* The preceding statement *(supra)* is then repeated. *(Id.* 14–15.*)* "*That selection is made by the weigher.*"

By 'plantation-marks' was meant a certain lot that came from some one plantation, and *samples were selected with reference to those plantation-marks*, if they were not so laid out by the weigher. They were usually so laid out by the weigher during that period—that is, from June 23d to Sept. 1st, 1888. *(Id.* 15, fol. 27.*)*

This method of selection for sampling was claimed to be, in respect of the bags, etc. in compliance with the Treasury Regulations of May 22nd, 1883, paragraph 13, 14, 15, 16 and 19—found upon pages 72 to 74 of the record—"EXCEPT the samples, after the 23d of June up to the 6th of September, were taken from plantation-marks, and not from invoice marks." *(Id.* 12, fol. 21.*)*

As to hogsheads, etc., it was also claimed that the samples "were taken in accordance with paragraphs 6 and 7 of said regulations, EXCEPT the samples were taken from the packages according to the plantation, and not the invoice, marks." *(Id.* 12, fols. 21, 22.*)*

We have already noted that this variation from the course prescribed by these regulations was not known to the Secretary until August, nor authorized by him until the sixteenth of that month. *(Id.* 74, fol. 131, Ex. F.*)*

There was, at least, one other deviation (if not more than that) from these regulations. They direct that, in the case of sugar in bags, ceroons and mats, care shall be observed "*to maintain the same number of packages to the draft throughout the entire cargo.*" *(Id.* 73, fol.

130, §§ 13 and 14.) It was testified that in actual practice, the number of bags in a draft varied from three to eight. (*Id.* 13 top, fol, 23.)

Hence, as samples were drawn from each bag in a draft (*Id.* 14, fol. 26) a thousand pounds of sugar (say) in the large bags would be represented by three samples, while the same quantity in small bags would be represented by eight samples. The prejudicial effect of this will be more apparent when we come to consider the subsequent manipulation to which the samples were subjected. It is all part and parcel of the illegal substitution of a foreign 'plantation' for the commercial 'package' which is imported, and is made by our statutes the basis of examination for duty.

The weighers having thus arranged in piles, according to plantation marks, the bags, mats, seroons, hogsheads, tierces, boxes, and barrels, samples were drawn from those thus indicated for that purpose.

"The samplers sampled the packages *so* designated by the weighers. [That is, with reference to the plantation mark.]

The samples taken were, mark by mark, packed in wooden cases provided by the department, each mark by itself. They were then placed in a government wagon, in charge of a government officer and taken to the classification-room of the appraiser's stores, with a written report to the appraiser of the marks sampled." (Rec. 14, fol. 26.)

"The samples, after they were separated, mark by mark, were packed in wooden chests provided by the department, each mark by itself. They were then locked, placed in a government wagon in charge of a government officer, taken to the appraiser's store, taken to the classification-room, and *each* MARK *mixed* separately by itself." (*Id.* 15, fols. 27–8.)

The plaintiff's protests declare this to be in defiance of R. S., sec. 2915, which refers to the taking of sugar-samples from designated representative *packages*, to determine the quality of the sugar in and by such *pack-*

ages (see *ante*, p. 2)—not to determine an arbitrary general average of all the sugar assumed from its mark to come from any particular *plantation*, which may happen to be brought here in any one ship! The last member of the sentence constituting this section (not quoted *ante*, p. 2) shows the cask, box, etc. are what is there meant by 'package'.

The sugar-examiner testified that, between April 1 and November 1, 1888, he examined the sugars in question to ascertain whether they were above or below No. 13 Dutch Standard.

"If all of one *mark* were below No. 13, ALL *of that mark were thoroughly mixed together*, and ONE SAMPLE OF THE MIXTURE was numbered by him *and sent to the laboratory*, and one sample was retained. A number of samples of each *mark* were received from the samplers. If there were one hundred hogsheads of one *mark*, twenty-five samples of that *mark* (25%) were received, but that *he sent to the laboratory but* ONE SAMPLE OF THAT MARK, MADE FROM A MIXTURE OF ALL THE SAMPLES RECEIVED BY HIM OF THE MARK, in a tin box with a serial number placed upon it by him. . . . . A written return of the polariscopic test of the sugar is received back from the laboratory; that, on receiving the tests, he placed on the invoices, over his initials, the classification of the sugar, its polariscopic test, as returned to him from the laboratory, and the rate of duty the sugar should pay." Under his initials were placed those of one of the six assistant appraisers. "The appraiser has an official stamp, which is placed on the invoices by a clerk, as a matter of course, after the examiner's and assistant appraiser's initials are on. *The appraiser in fact does not see the sugars, nor personally put on his stamp or classification.*" (Rec. 15, 16; fols. 28, 29.)

This witness examined all the invoices in suit, and they bore his return or classification; in all cases based upon his own comparison of color and on the polariscopic returns from the laboratory, made as aforesaid. (*Id.* 16, fol. 29.)

The next ground of dissatisfaction of which our protests (*Id.* 48, fol. 89) notified the defendant, was that these polariscopic tests of illegally drawn and compounded samples were made by persons not entitled to act in this behalf, who were unlawfully intruded into the proceedings upon which the assessment and exaction of which we complain are founded.

The facts upon which this objection is based is not in dispute, the statutes are clear and positive, nor can the application of legal principles be difficult to the Court.

Agreeably to item "Second" of section 2536, Rev. Stats., there are these customs-officers

> "In the district of New-York;—a collector, an assistant collector, a naval officer, a surveyor, *one appraiser*, and *ten assistant appraisers*, who shall reside at the port of New-York.

This provision for an appraiser is part of the first section, of the act of July 27, 1866, c. 284 (14 Stats. 302) which is broken up into three sections in the revision. Perhaps the scheme of the act can be more easily, or readily, understood by consulting it in its original form. (14 Stats. 302–4.)

It enacts that, in lieu of the existing appraisers, the President, with the assent of the Senate, should "appoint one appraiser, who has had experience as an appraiser, or who shall be practically acquainted with the quality and value of the chief articles of importation," etc., "and who, before he enters upon the duties of his office, shall take and subscribe an oath faithfully to direct and supervise the examination," etc. (14 Stats., 302, § 1.)

The second section of this act of July 27, 1866, c. 284, enacted that "in lieu of the assistant appraisers now authorized," etc., the Secretary of the Treasury may appoint not exceeding ten assistant appraisers *for said port* who have had experience as appraisers," etc., "and who shall be employed in appraising goods

according to law, under the direction and supervision of the appraiser;" to take an oath, etc., etc. (*Ibid.* § 2; R. S. § 2615.)

The effect of R. S., sec. 2536, is to deprive the Secretary of the power to appoint these assistants, and to vest it in the President. (15 Atty. Gen's. Ops. 449.)

The fourth section (act of July 27, 1866—14 Stats. 303) provides "in lieu of the clerks now employed," etc., at the port of New-York, "that the Secretary of the Treasury may, *on the nomination of the appraiser*, appoint such number of examiners as said Secretary may determine *in writing* to be necessary . . . to aid each of *said* assistant appraisers in the examination, inspection and appraisement of goods, wares and merchandise, *according to law*." The qualification of experience, and the preliminary taking of an official oath, are prescribed; "and the Secretary of the Treasury shall also appoint, *on the nomination of the appraiser*, the clerks, verifiers, samplers, openers, packers, and messengers employed in the appraiser's office." (14 Stats. 303, § 4; now R. S., secs. 2538, 2539, and 2940.)

The ninth section of this act of 1866 (14 Stats. 303–4) permits the appraiser to require over-time of his subordinates, when necessary. (R. S. sec. 2944.)

That is to say, an accumulation of goods for appraisal is to be met by devoting more hours to the work, not by an increase of the force employed.

As a further restraint upon any augmentation, or diversion, of employés by mere departmental action, the act of Aug. 15, 1876, forbade the Secretary of the Treasury to employ any person beyond provision therefor made by law. (19 Stats. 169.)

Ever since March 1, 1823, the Secretary of the Treasury has had statutory permission to "direct *appraisers* for any collection-district to attend in any other collection-district for the purpose of appraising any merchandise imported therein." (3 Stats. 735,

§ 16; now R. S. sec. 2947.) But this is the extent of the Secretary's right of transfer. *Expressio unius*, etc.

There were four *general* appraisers—*i. e.*, not appointed for any district—presidential appointees, whose employment it was to visit ports designated by the Secretary. (Act March 3, 1851, c. 38, § 3–9 Stats. 630—now R. S. sec. 2608.)

The "fifth" item of Rev. Stats., sec. 2529 says there shall be in the district of Boston, etc., a collector, naval officer, surveyor, two appraisers, two assistant appraisers, and a special examiner of drugs.

"SEC. 2530. The clerks and other persons employed in the appraiser's office at the port of Boston *shall be appointed by the principal appraiser*, and their number and compensation shall be fixed by the Secretary of the Treasury."

Comparing the hereinbefore-cited sections, it will be noted that in Boston the appraiser has the absolute, unrestricted, power of appointing the prescribed number of such subordinates.

In New-York, the Secretary may appoint, *only* from the persons nominated by the appraiser, the examiners to aid the assistant appraisers, and the clerks, samplers, and messengers employed in that office. (R. S. §§ 2538–9.) Rev. Stats., Sec. 2940 requires of these appointees qualifications not demanded of those serving in Boston; and R. S., sec. 2941 imposes upon these New-York officials a prohibition to which those in Boston are not subject.

These provisions cannot be nullified by arbitrarily transferring to New-York from Boston persons not there designated with any reference to these qualifications or prohibitions.

The proper action of other customs officials is but a condition precedent to that of the collector. It is his decision *thereon* that is final unless reversed upon an appeal duly taken to the Secretary of the Treasury, or to the Courts. Yet it has been held, uniformly and

multitudinously, that misconduct, or lack of power, on the part of those whose examinations and appraisements are reported to and accepted by him will nullify his action, if seasonable and proper objection to it be made and prosecuted.

The classification is always made by the collector, based upon the examination of the imports reported to him.

R. S. Tit. XXXIV., ch. Six, especially §§ 2901–2; 2906; 2922; 2929.

The *collector's* decision as to rate final, etc., *Id.* § 2931.

"§ 603 While the appraisement of imported merchandise determines the value as the basis for the liquidation of ad valorem duties, or duties dependent on value, it is *the collector of customs* who decides the *classification* of the article, and the *rate* of duties, according to the provisions of the tariff act."

Elms, Law of Customs, 257.

Prior to the act of June 10, 1890, protests have always been directed to, and suits to recover excess brought against, the Collector. R. S., § 2931.

See the cases in this Court referred to by HUNT, J., in

Schmeider v. Barney, 13 Blatch. 42 bot., and authorities hereinafter cited, and *passim*.

During the time of our importations, there were the regular quota of customs officials, authorized by these laws, engaged in the discharge of their functions in the appraiser's office at New-York—except so far as they were illegally interfered with and intruded upon, as hereinafter mentioned. (Rec. 16, fol. 29; 17, fol. 32.)

Toward the latter part of March, 1888, Mr. J. T. Leary presented to the New-York appraiser a letter, of the Secretary, dated March 22d, 1888, addressed to the "appraiser of merchandise, Boston," of this tenor;—

"SIR: Upon the receipt of this communication *you* will direct the officer in charge of the polariscopic testing of sugars at your port to report for duty on and after April 1st, 1888, and until further ordered by the department, to the appraiser of merchandise at the port of New-York.

The officer now performing similar duty at New-York will be *detailed* to take the place of the officer *temporarily transferred* from your office." (Rec. 16, fol. 30).

Mr. Leary was never nominated as examiner or appraiser at New-York. *(Id.*, fol. 29.*)* Nevertheless, he remained, during the months in which our importations were dealt with, in the appraiser's department there, "*in charge of the polarizing* of sugars." *(Id.* 16, fol. 30; 61, fol. 111, to 71, fol. 127.*)*

The New-York appraiser testified, as to Mr. Leary;—"*He was not at all subject to my directions.* He acted there *independently of me*, in the polarization of sugars. *(Id.* 16, fol. 30.*)* He added that

"The returns of the classifications upon sugar invoices which were made upon sugar below No. 13, Dutch Standard, between May and October, 1888, and which were signed by the officers in my department, and by myself, were *entirely* made and based upon the polariscopic tests returned from the laboratory, signed by 'the chemist in charge.'" (Mr. Leary.) (Rec. 16–17, fol. 31; 61 to 71, fols. 111 to 127.)

Toward the end of May, 1888, Mr. Charles S. Soule presented to the New-York appraiser a letter, dated May 28, 1888, addressed by the Secretary of the Treasury to the "Appraiser of merchandise, Boston," of this tenor;—

"SIR: Upon the receipt of this communication, *you* will please *detail* Charles S. Soule, *examiner in your office*, for temporary duty under the appraiser at the port of New York, to assist *examiner* J. T. Leary in polariscopic tests of sugar." (Rec. 17, fol. 31.)

Concerning Mr. Soule, the New-York appraiser testified that,

"He remained several months and, I presume, assisted Mr. Leary in polarizing sugar. *He was not at all under my control or direction.* So far as the polarization of sugar was done by Mr. Leary and Mr. Soule, it was done *entirely independent of me* and of my direction and control *in any way;* and, so far as I know, entirely independent of the assistant appraisers. Prior to the arrival of Mr. Leary, the polarization and classification of sugar had been under my direction and control." *(Id.* 17, fol. 31.*)* He added that it had been attended to "under my direction" by an examiner duly nominated. *(Ib.* and fol. 32.*)*

Under the letter of March 22d, examiner Abbott was *transferred* from New York to Boston; and under that of May 28, Mr. Ball, who had been one of the New-York examiners was transferred to Boston, on the arrival of Mr. Soule. *(Id.* fol. 32.*)*

There were ten or twelve examiners in the New-York sugar-laboratory in 1888;—*five employed in the sugar-room, making polariscopic tests,* from April 1st to November, 1888. (Rec. 17, fol. 32.)

Mr. Leary was shown to have been duly appointed, April 23, 1886, as "examiner No. 6, class 4, in and for the district of Boston," etc. He testified that, about that date, he took an oath of office as examiner at Boston. (Rec. 19, fol. 36, where there should be a period after 'Boston', and the next word 'Up' should commence the next sentence—as the sense of the reading shows.)

"I did not take any other oath of office anywhere. *I never received any appointment,* or took any oath of office, *as examiner at New-York.* I NEVER WAS AN EXAMINER THERE. While in New-York I was *supervising* the sampling of sugar there. *I made the polariscopic returns* to the appraiser while there, which I signed as 'chemist in charge of polarization' AND I WAS, in fact, SUCH." He added that he went to New-York upon the verbal order of the Boston appraiser, which he understood to based upon one from the Secretary of the Treasury. (Rec. 19, fols. 35, 36.)

His testimony concluded with this statement;—"Mr. Soule came about June 4th, and made tests right along, *under my direction.*" *(Id.* 20, fol. 37.*)*

Plaintiffs' counsel then called as a witness—

CHARLES S. SOULE, who testified that in 1888 he was an examiner in Boston, and had taken an oath of office there, but *never was appointed an examiner* or assistant-appraiser *in New-York; never took any oath of office there.* He came here "*by order of the appraiser at Boston,* and *acted under Mr. Leary;* was *an assistant to him* and made, while here, one test of nearly every other sample of sugar—that is, *he examined,* approximately, *one-half the sugar.*" *(Id.* 20, fol. 37.*)*

The custom-house liquidator then testified to his computation of the amount demanded in this action, as wrongfully exacted, being the difference between the amount of duty actually paid (under protest) and the amount accruing according to the polariscopic tests stated upon the entries, $51,772.14. (Rec. 21, fol. 40.)

Documentary evidence showing the dealings with our sugars by the various customs officers was then introduced. *(Id.* 31 to 71.*)*

Extracts from Treasury Regulations of 1884, and the departmental letter of May 22, 1883, SS. 5725—which will be considered in the argumentative part of this brief—were then read, together with the Secretary's letter of Aug. 16 and Sept. 1, 1888, and both parties rested. (Rec. 71 to 175; fols. 128 to 133.)

Plaintiff's counsel moved that a verdict be directed for the plaintiff; which motion was denied, and plaintiff excepted. *(Id.* 75 bottom, fol. 133.*)*

On motion of the defendant's counsel, the Court then directed a verdict for the defendant, and the plaintiff excepted. *(Ib.* 75–76, fol. 133.*)*

Assignment of errors.

The plaintiff in error assigns for error :—

I. The denial of the motion that a verdict be directed for the plaintiffs. (Rec. 75, bottom, fol. 133).

II. The direction of a verdict for the defendant. (Rec. 75, 76, fol. 133.)

III. The verdict so rendered by direction. (Rec. 9, fol. 16.)

IV. The judgment for defendant entered upon that verdict. (Rec. 9, fol. 17.)

POINTS.

I.

Introductory.

Questions presented.

Our protests object to the polariscoping of our sugars above the invoice statements of their tests, by unauthorized, unofficial, intruders ;—and to the further disregard of the statutes in the method of obtaining the samples which were thus tested. (Rec. 42, fol. 75 ; 48, fol. 88 ; 58, fol. 106.)

The verdict was directed for the defendant, upon the ground that Messrs. Leary and Soule, who polariscoped our sugars for duty, were *de facto* officers ; and that that the method of sampling adopted satisfied the requirements of the statutes.

We respectfully request this Court to re-consider both these questions, which we will discuss in the reverse order of the above statement of them; according to their actual sequence and that of their proof in the record.

II.

What a 'sample' is.

We deny that the mixture polariscoped in this case was the sample intended by our customs laws; *certainly not*, as respects sugar.

We go further, and easily show, from the record, that it was not "a sample" of *anything*, within any meaning ever attached to that word. It represented nothing that ever existed outside the appraiser's office, where it was concocted and tested. It first had its existence there. It had no similar, and no equivalent, anywhere else;—certainly none in our importations or in our commerce. It did not even represent the quality, or saccharine strength, of any sugar actually produced upon any particular plantation—if that were a matter which it concerned anybody to know.

Hence, it was *not* "a sample."

A sample is "a part of anything presented for inspection, or shown as evidence of the quality of the whole." (Webst. Int. Dict.)

"A part of anything taken at random out of a large quantity and presented for inspection, or intended to be shown as evidence of the quality of the whole. *A representative specimen.*" (Cent. Dict.)

A small quantity of a commodity exhibited at public or private sales as a specimen. Sugars, wood, spirits, wine, coffee, and, indeed, most species of merchandise, are sold by sample." (McCulloch, Com. Dict.)

Then follows a list of over a hundred dutiable articles, with the prescribed quantities which the customs officers may take as samples, "per package," etc. *(Ib.)*

"The word 'sample,' both in its legal and popular acceptation, means that which is taken out of a large quantity as a fair representation of the whole—a part shown as a specimen." Webber's case, 33 Grat. 904.

The "large quantity" whose quality is to be represented by a sample is known to our customs-laws as a "package";—and is expressly so designated in R. S. sec. 2915, relating to sugar-samples taken to be tested as the basis for the assessment of duty.

A brew of all the liquors coming from the same estate, mixed together, is no fair sample of any individual bottle, pipe, or case.

III.

Packages are to be sampled.

That merchandise is to be sampled for appraisement and assessment of duties which is, by commercial usage, so dealt in;—and the sampling should be done in the same way.

See Treasury Regulations, Art. 449, page 71 of the record.

"If the merchandise be such as, by commercial usage, is bought and sold by samples, or where, by such usage, the character and quality of the merchandise are so determined, the appraisement may, in such cases, be made by samples, due care being taken that they are *properly* and fairly selected *from the packages designated on the invoice* by the collector and *identified* AS SUCH. 1 Clifford, 492." (Rec. 71-2, fol. 128.)

It is PACKAGES that are to be sampled. The mode of selection of the package to be sampled, we will presently consider;—what we now wish to emphasize is, that every sample (analyzed in the method appropriate to

determine that quality possessed by it which is the subject of investigation) must be referable to some commercial package as the unit, of which the tested sample is the representative.

The whole scheme of our tariff laws rests upon the basis of the commercial package being the subject of the examination for the assessment of duties—whether the testing be of the entire package, or of a sample *thereof* drawn therefrom.

This idea so pervades all our customs legislation that citations are scarcely needed to support the statement; especially as many of the provisions of law, the decisions of the courts, and the regulations of the Treasury Department, will be quoted in another division of this brief, wherein we consider the requirement of a designation, upon and from the invoice, of the packages to be examined. (See *post*, pp.).

We will here, however, refer to some pertinent sections of the Revised Statutes.

See R. S., sec. 2775; form of entry, sec. 2785; sec. 2807, item "Third," requiring in a manifest "a just and particular account of all the merchandise so laden on board, etc., whether in packages or stowed loose, together with the marks and numbers, as marked on each package, and the number and quantity and description of the packages, in words at length, whether leaguer, pipe, butt, puncheon, hogshead, barrel, keg, case, bale, pack, truss, chest, box, band-box, bundle, parcel, cask, or package of any kind or sort, describing the same by its usual name or denomination"; sec. 2808; which manifest sec. 2827 requires every master, etc., to deliver to the collector in duplicate, "specifying the marks and numbers of every case, bag, box, chest or package," etc.; by sec. 2830, at ports of *delivery* [other than those of *entry*] the surveyor shall cause the casks, bags, boxes, chests or packages to be inspected and compared, etc.; sec. 2870, all landing permits shall specify, as particularly as may be, the merchandise to be delivered, namely, the number and description of the packages, whether trunk, bale, chest, box, case, pipe, hogshead, barrel, keg, or any other packages whatever, with the number and marks of each package,

etc., secs. 2887, 2888; sec. 2899, no merchandise shall be delivered until the *packages sent to be inspected or appraised* shall be found correctly and fairly invoiced; sec. 2901, packages to be examined to be designated on the invoice (see *supra*, p. 2); sec. 2939, *same, in N. Y. (post*, p. 28*);* secs. 2911, 2912; 2915, relating to *sugar* (see *supra*, p. 2); secs. 2926, 2980, 2985, 2990–1, 2995, 3002, 3016, 3018, 3029 *(sugar)* to 3035, 3069.

IV.

What a "package" is.

The above-cited sections indicate what a 'package' is. Not only in that "commercial sense" in which "all laws regulating the payment of duties" are to be understood (112 casks, 8 Pet. 279) but to the ordinary apprehension a package implies a contained article and its containing envelope, taken together; the latter being merely accessory to the former.

The Century Dictionary defines 'package' as "a quantity pressed or packed together. *A unit of freight.*" Goods put up in a "form for handling, transportation or sale."

Of sugar, the package may be a hogshead, barrel, box, mat, seroon, or bag; of coffee, the bag; of tea, the chest; of dry goods, the case;—but whatever the form of the customary commercial package, that is the unit for dealing with it in the custom-house, as it in trade; that is what is to be examined and acted upon, whether the examination be of the entire package, or of a sample from it. In the latter case, the sample simply represents the package from which it is taken.

The package is the commercial unit, of which the

sample is a fraction absolutely insignificant, except as representing the integer.

U. S. v. Goldbach, 1 Hughes, 530.
Boskowitz v. Adams, 93 Ills. 529.
Wyld v. Pickford, 8 M. & W. 462.
Karthaus v. Frick, Taney, 94.
Cook v. Pennsylvania, 97 U. S. 573.

Of new molasses barrels, exported empty and brought back filled, this court said;

"The barrels have been applied to the commercial use for which they were manufactured; and, when shipped with their contents, brought back to the United States, and are offered with their contents by the importer for entry at the custom-house, they have then, *in respect to the revenue laws* of the United States, acquired a new character. *For all the purposes of appraisement*, with a view to ascertain the dutiable value of the importation, *the barrels*, if filled, *are regarded with their contents as packages;* and it is the duty of the collector, by the express words of the Statute, to order one in ten of the *packages* to the public store. Examination *of the selected packages* is then made by the *local* appraisers; and, in case of appeal, the same packages are required to remain in the public store, and frequently constitute the only attainable basis of the subsequent adjudication by the merchant appraisers. Such packages are ordered to the public store *in the same condition as when imported*, and it is not possible to doubt that Congress intended to include, in the words, one in ten of the packages, the covering of the importation, if belonging to the merchant, as well as the contents within it. Confirmation of these views, if any be needed, may be found in the almost unbroken practice of the Treasury Department."

Knight v. Shell, 24 How. 530, 531.
Belcher v. Linn, *Ibid.* 535 bottom.
Kimball v. Collector, 10 Wall. 449.

The Century Dictionary, *ubi sup.*, refers to the original package, as known to the commerce and constitutional law of this country as "the package or casing in which goods are handled in transportation in the commerce in question. Thus, if wine is imported in hogs-

heads [plural] the hogshead [singular] is the original package; if in bottles, packed in cases handled separately, the case is the original package."

Brown v. Md., 10 Wheat. *442, top.
Leisy v. Hardin, 135 U. S. 110.

V.

A "draft," or pile, of sugar in bags or hogsheads is not a "package."

This proposition is one not admitting controversy. It is made the title of a division, to emphasize our objections to the method of original sampling adopted; to indicate the nature of our complaints, and to show how well-founded they are in law and in fact.

Be sure, a 'draft' or pile is an aggregation of packages; but it is not a *uniform* one, hence deprives us of the benefit of *proportion*, in the taking of samples, which the statute secures to us; and which the explicit directions of the Secretary required to be preserved with reference to this very class of merchandise. (Rec. 73, fol. 130, § 14.)

The tenth or twentieth draft might consist of three bags, and all the intermediate ones of eight; or the converse. *(Id.* 12, fol. 21; 13, fol. 23.*)*

Disregarding the law, the defendant (per his deputy and subordinates) disobeyed his official chief.

The greatest departure from the statute—whether known to and sanctioned, or ratified, by the secretary or not—was the separation and sampling by "plantation-marks," unknown to the invoice. (Rec. 11 to 15, fols. 19 to 29.)

VI.

The 'plantation-mark' is unknown to the law.

In conformity with the letters (Rec. 11, fol. 20) from the defendant's special deputy to the surveyor our sugars as they were unladen from the importing vessels, were separated into piles "according to their plantation-marks which were on the hogsheads, tierces, barrels, bags," etc., before weighing; "afterwards they were weighed and *sampled according to the plantation-marks*." (Rec. 11, 12, fol. 21.)

As to the bags: "The sugars in bags were sampled as directed by Treasury Regulations of May 22, 1883, pars. 13 to 16 and 19, EXCEPT that *samples* after the 23d of June, up to the sixth of September, *were taken from plantation-marks*, and NOT FROM INVOICE MARKS." *(Id.* 12; fol. 21.)

As to hogsheads, etc.: "The hogsheads, tierces, barrels and boxes were placed by themselves, according to plantation-marks, as they came off the ship, and 25% and 50% were taken, in accordance with paragraphs 6 and 7 of said regulations, EXCEPT that samples were taken from the package according to the *plantation*, and NOT *the invoice* marks." *(Id.* 12, fols. 21, 22.)

How wide a departure this is from the statute will be seen when we consider how close is the connection it establishes between the invoice and the examination of packages; and, indeed, how this is the controlling and important document in all the custom house dealings with importations.

The greatest injury arose from the mingling of all sugars bearing similar plantation-marks into one mélange for testing; making the assumed, hypothetical yield of a distant cane-field the unit of examination, instead of a visible previously designated package.

It is enough to say here, that the law as to this merchandise explicitly declares THE *package*, and not *a*

plantation, to be the thing sampled to determine quality—the quality of 'such package.'

R. S., sec. 2915 imposes upon the secretary the duty of so regulating the taking of samples "by the *proper* officers" from *packages* of sugar as to ascertain the true quality of SUCH sugar; *i. e.* the sugar in the sampled package. U. S. v. Gooding, 12 Wheat.* 477.

"It was the aim of Congress, by this clause, to enable the officers to take samples from the packages in such manner as to secure a knowledge of *their* entire contents, in the interior and in every part, as well as on the surface; in other words, to see that there was no fraud in making up the packages. It was supposed that *the true quality of an entire package could be ascertained* by proper care in taking out the samples." Merritt v. Welsh, 104 U. S. 703 bottom.

VII.

Invoice packages to be designated for examination.

In no particular are the customs-revenue laws more specific in their directions than as to the method of examining packages, to determine the duty upon importations they represent.

Not only are there general instructions how to proceed, but a special injunction addressed to the collector of this port. (compare R. S., Secs. 2901, 2939 and 2942.)

These laws, from their very nature, are addressed to the merchants and officials of this country. (Elliott v. Swartwout, 10 Pet. 151, and cases *passim*.)

The 'package' spoken of is that known to the trade and commerce of *this* country, as contradistinguished from the bundles, packages, and factory or other marks,

employed for domestic or individual purposes in another country.

Within the meaning of these laws, a 'package' does not become such until it has drifted into the tide of foreign commerce.

It is the "marks and numbers" assigned them for *these* purposes that are to be inscribed upon the entry-blank prescribed in Form 80, Art. 335 of the General Treasury Regulations of 1884.

At all events, it is an irresistible inference that it is *these* "marks", etc., upon the invoice and entry, that are required to be used in subsequent customs proceedings upon that entry. *(Id.* Art. 338.*)*

See form of permit (Art. 341, Form 81) and *bond.* (Form 85, Art. 353.)

"Nothing remains to be done subsequent to the granting of the permit and the landing of the goods except such acts as are required by law *to correct any errors in the invoice,* and to liquidate the duties," etc.

"Before the permit is granted, it is the duty of the owner, consignee or agent to present the invoice to the collector and make the entry in the form required by law, and thereupon the collector certifies the invoice and grants the permit," etc., first designating the packages, at least one in ten, to be sent to the public store, and marks the same on the invoice, entry and permit.

Packages intended for examination by the appraisers are usually sent to the public store for that purpose, but cumbrous articles may be examined on the wharf where they were landed; and samples may, in certain cases, be used for the same purpose *instead of the packages from which they were selected* by the sampler."

[MEMO. There is no greater right to mingle samples than to empty packages into bulk.]

"The permit was subsequently granted in due form for the landing of the goods, and one in ten of the packages was ordered to the public store for the examination of the local appraisers. Prior to that stage of the proceedings *the appraisers have no jurisdiction* of the case, and they have no duty to perform in the premises.

Beyond doubt, the collector may direct that all packages shall be examined, but he is required to designate *on the invoice* at least one package of the same, and one package at least of every ten packages of the importation, and the direction is that he shall order the same to the public stores to be opened, examined, and appraised. All those requirements having been fulfilled, the appraisers are furnished with *the original invoice, which contains the marks of the collector, designating the packages* sent to the public stores for their examination."

Kimball v. The Collector 10 Wall., 449.

"Each invoice and entry was to be deemed and treated as *a separate transaction* for appraisement and for the assessment of duties."

Sampson v. Peaslee, 20 How. 580.

"Every invoice must be appraised on *its own* merits."

Goodsell v. Briggs, 1 Holmes, 301.

Judge LOWELL says it is a right secured both to the government and to the merchant to have the invoice so treated, as a separate transaction.

The term 'invoice' is one in common use; and the Court will, outside the ninety-one introduced in evidence in this case (Rec. 22 to 24) take judicial cognizance that, as employed in foreign commerce, they always contain the marks and numbers of the packages imported.

"Invoice. An account of goods or merchandise sent by merchants to their correspondents at home or abroad, in which the peculiar marks of each package, with other particulars, are set forth. See example, vol. 1, p. 207.

McCul. Com. Dic. 112.

It conveys "a number of particulars in a short space, viz., the marks, the numbers, the value and the contents of each package." 1 *Id.*, 207. Elmes, Customs, § 420.

It is *the* basis, or datum-line, with reference to which all the action of customs officials, in ascertaining duty, is had.

U. S. v. 67 Pckgs., 17 How. 91, 92.
3 Webst. Works, 233.

See, *inter alia*, R. S. Secs. 2837 to 2839; 2852 to 2860; 2862 to 2865; 2899 to 2902; 2921; 2926; 2930.

It is as inseparable from the imports it specifies as is a bill of lading from exports.

Almy v. Cal. 24 How. 174.

Sec. 2911 may be incidentally referred to, as indicating the inseparable connection between the *package* and the mention of it in the *invoice;* and there are other statutory provisions, of like import, "too numerous to mention." Especially, see § 2921.

Every direction given to the Collector supposes and requires him to have the invoice before him. He cannot take a step in the performance of the duties imposed upon him, he cannot comply with one of the requisitions of the act, without it. *He* is to cause one package at least out of every twenty [now, ten] to be opened and *examined;* but, before he does this, he is to *designate* the packages which are to be opened and examined, on the invoice. Can this be done with an invoice which he has not", etc.? . . . The act proceeds; if the package *thus designated and examined* shall be found not to *correspond with the invoice*", etc.

U. S. v. 28 Pckgs. Gilp. 323.

The inquiry above quoted could be answered affirmatively, contrary to its manifest implication, if the Collector was not to use the invoice in the very act of designation.

To order "a tenth, or a quarter, of the packages to be examined" is not a *designation* of packages. It may designate a fraction or proportion of the whole, but not "*the* packages." It leaves the particular package to be examined to blind chance, or to the selection of a

wharf weigher or gauger, whom the law has not charged with that duty.

The designation must be "on the invoice"; that is, in conformity or correspondence with it; by *its* marks and designations; in order to see if the articles "correspond" therewith (R. S., § 2921) and for the purpose of tracing any oversight of the goods, and to permit mistakes to be rectified.

Kimball v. Collector, 10 Wall. 449, 450.

That was the difficulty in the present instance. The *weigher* selected bags to be sampled, after first separating them by *plantation* marks, which did *not* appear on the invoice. (Rec. 12, fols. 21, 22.)

In September, they returned to the *invoice* marks as the guide. *(Id.* 12, top; 13, fol. 24.*)*

For the two months this rule was in force the procedure was for the bags or hogsheads to be piled or placed together according to plantation marks, *before* they were weighed; and, as the weighing proceeded, the *weigher* would stencil every twentieth "draft" (or load on the box of his scale) "U. S. Sample;" and, from these bags, thus indicated, the samplers drew the samples which went to the appraiser's store to be compared with the Dutch Standard and polariscoped, if below No. 13. *(Id.*, 12, 13.*)*

According to the size of the bags, the 'draft' might contain six bags or eight, or three. *(Id.*, 12, 13.*)*

The whole proceeding or sampling by draft, under general regulations of May 22d, 1883, SS. 5725, is in utter disregard of the requirements of law; whether the further error of going by plantation marks be incorporated therein or not.

A bag, a hogshead, a mat, a box;—these are all 'packages', of which the statute speaks; but a 'draft'—made up by the capacity of the scale-box, or the caprice of the weigher—is not. The 'draft' that the unknown sub-weigher is *going to make up* on the wharf

cannot he "designated on the invoice" by the collector.

The Secretary has no authority to designate; nor to substitute some other device in lieu of the statutory one, of a designation of packages on the invoice by the collector.

R. S. "SEC. 2901. The *collector* shall *designate on the invoice* at least one *package* of every invoice, and one *package* at least of every ten *packages*, etc. (Note the repetitions of this word; he is to designate the packages *of* the invoice, *on* the invoice!) Either he, or the appraiser may cause a *greater* number to be designated; and the *collector* "shall order the package *so* designated to the public stores for examination", etc.

This applies to all collectors; but the collector in New York is exceptionally singled out by this further statutory direction:—

"SEC. 2939. The collector of the port of New York shall not, *under any circumstances*, direct to be sent for examination and appraisement *less* than one *package* of every *invoice*, and one *package at least* out of every ten *packages of merchandise*; and a *greater* number should he, or the appraiser, or any *assistant* appraiser deem it necessary. When the Secretary of the Treasury, however, from the character and description of the merchandise may be of the opinion that the examination of a *less proportion of packages* will amply protect the revenue, he may, by special regulation, direct a *less* number of packages to be examined".

This would seem to be so plain that even the Special Agents of the Treasury need not err therein.

No authority is given the Secretary to *designate*. That *must* be done '*on the invoice*', by that official in whose custody it is.

The collector cannot direct *less* than one in ten to be examined; while the expressed thought of any assistant appraiser may compel him to send *more*. On the other hand, the Secretary may direct *less* than one in

ten to be sent to the public stores, but has no authority to require *more*.

So, a consul, conformably to regulations under Sec. 2903, can certify a *depreciation* of foreign currency, but not an *appreciation*.

S.S. 5725, May 22d, 1883, § 6, is an order by the Secretary to sample one in four of large lots and half of those of ten or less packages; a command he had no right to issue.

Equally unauthorized is the rest of the sentence and paragraph, directing the collector to endorse on the invoice "Sample 25 (or 50) %, *alternate* even (or odd) number"; leaving him no other choice than the toss-up between odd and even.

Paragraph 7 of those regulations, further carrying out that scheme is obnoxious to the same objection.

Examination of the statutes shows that it is the *Collector alone* who is to designate packages on the invoice, not less than ten in number, or one on each invoice; that those officers who direct the actual examination can cause more to be designated *by the collector*; and the Secretary can direct that less be designated *by the collector*; but there is *no* provision for further interference with his discretion in the act of designation, and it is explicitily declared that *he shall* designate by packages on the invoice.

To mark "odd" or "even" on an invoice is *not* a *designation of packages*. It is a so-called designation by the hap-hazard chance of whatever the slings and tackle may first bring out of the vessel's hold. *(Id.* 72, fol. 129, § 2.*)* It is a direction as to a course of procedure, not the designation of a package.

There are hogsheads among our importations, affected by above-mentioned paragraphs, but the bulk of our sugar came in bags. These were controlled by the same 'odd or even' directions, and also by paragraphs 13 to 19. *(Id.* 73, fol. 130.*)* These all required the sampling to be by marks; *i. e., each mark* was to be

deemed a separate lot, while *the Statute recognizes no such separation.*

Paragraph 13 says that, to secure this method of sampling, "the sugar, when discharged, shall be separated by marks as far as possible."

"The selection of the sample packages shall be made by the collector, as in the case of other sugars, when the cargo is discharged or weighed, every twentieth draft in the case of bags and ceroons and every fortieth in the case of mats being taken, care being observed to take no broken or damaged packages and to *maintain the same number of packages to the draft* throughout the entire cargo."

It will be noted that the weigher did *not* comply with the last clause of this paragraph; for some of his drafts were of eight bags, and part of but six, and some three. (Rec. 12, 13.)

This substitution of another method for the statutory one rendered probable a frequent violation of the requirement that one package of every invoice be examined.

A small invoice might be made up of bags of which a great number might be contained in other invoices of the same entry. Thus in the mere chance of odd and even on the marks, as they came from the vessel, it could very easily happen that none of the small invoice would be contained in the twentieth draft.

It by no means follows that sugar of the same mark (say F) *in different invoices* had the same origin, or possessed the same qualities, or equal saccharine strength. The mark was often the mere initial of the shipper; and two Cuban Smiths might each stencil S upon their respective shipments. Sugars in the same vessel came, some from Havana and some from Sagua la Grande (Rec., 53); from Cardenas, Matanzas and Cienfuegos *(Id.* 32*)*; as well as from Barbadoes. *(Id.*, 45.*)*

Different bags of like mark would be distinguished in fact, and *upon the invoice*, by serial numbers,

whereby they should be designated thereon; but the bureau-method, substituted for the statutory one, entirely ignores these numbers; requiring only marks on the bags, which may or may not be on the invoice, to be regarded.

So the two-months' experiment with the plantation-marks was merely an extension of the original illegal order of May 22, 1883, SS. 5725. So soon as the attention of the Secretary (or his assistant) was called to its impracticability, it was revoked; but the Secretary did not have presented to him the legal objection to the order (SS. 5725) of his predecessor in such shape as to cause its revocation.

The additional evils of adopting the plantation-mark as the guide in sampling were *(inter alia)* that there was increased probability of omitting some invoice; of confounding together sugars of the same mark, but no similarity of origin or quality; and, above all, the utter impossibility of the importer being able to tell, when he received notice of the tests, to what sugars *upon the invoice* these tests applied, so as to call for a resampling of them; or to test samples himself.

R. S., Sec. 2915, prescribes nothing additional as to *the designation of packages.* It simply requires that such samples as are taken, from the lawfully designated packages, shall be *so* taken—"in such a manner"—*by the proper officers* as to ascertain the true quality of "*such* sugar"; *i. e.* the sugar in the "packages". (104 U. S. 703.)

That is to say; a sample taken from a hogshead of sugar shall not be taken from the base into which the moisture has drained, or been deposited; nor near the top, where there is almost perfectly dry sugar left; but through the mass, so as to show the true quality of the *package* of sugar, as an entirety—the average of the whole mass in that *package*, whatever its form.

In short, the whole scheme of examining sugars as ordered by SS. 5725, and the sending Mr. Leary here

from Boston to conduct the polariscopic examination (as hereinafter discussed) rest upon the assumption that the Treasury Department can substitute any method it deems superior for that prescribed by law.

In both particulars, it was an effort to take away the performance of their duties from the officers provided by law, and impose them (in a changed and extra-statutory form) upon persons having no right to intermeddle therein.

"The orders, as well as the opinions, of the head of the treasury department, expressed in either letters or circulars, are entitled to much respect, and will always be duly weighed by this court; but it is the laws which are to govern, rather than their opinions of them; and *importers*, in cases of doubt, *are entitled to have their right settled by the judicial exposition of those laws*, rather than by the views of the department. Marriott v. Brune, 9 How. 634–5. And though, as between the custom-house officers and the department, the latter must by law control the course of proceeding (5 Stats. 566) yet, as between them and the importer, it is well settled that the legality of all their doings may be revised by the judicial tribunals. Tracy v. Swartwout, 10 Pet. 95; U. S. v. Lyman, 1 Mas. 504; Ops. Atty. Gen. 1015."

Greeley v. Thompson, 10 How. *234.

"The collector of the customs is a ministerial officer; he acts under the instructions of the secretary of the treasury," etc. "The secretary of the treasury is bound by the law; and although, in the exercise of his discretion, he may adopt necessary forms and modes of giving effect to the law, yet neither he nor those who act under him can dispense with or *alter* any of its provisions." (10 Pet. 94, 95.)

Merritt v. Welsh, 104 U. S., 700.
Campbell v. U. S. 107 *Id.* 413.

"It was said by this court in Morrill v. Jones, 106 U. S. 466, that the secretary of the treasury cannot, by his regulation, alter or amend a revenue law, and all that he can do is to regulate the mode of proceeding to carry into effect what Congress has enacted."

U. S. v. Eaton, 144 U. S. 687.

Balfour v. Sullivan, 8 Sawy. 648.
Pascal v. Sullivan, 10 *Id.* 284.
Lennig v. Maxwell, 3 Blatc. 126.
Munsell v. Maxwell, *Ibid.* 364.

We have quoted thus extensively, not because the proposition is at all doubtful, but because it is so constantly disregarded, and so palpably in the present instance, which is one more illustration of "the perverse propensity of most people to try how far they can deviate from the requirements of a statute without forfeiting the benefit of its provisions." (68 Me. 120.)

The General Regulations prescribe the statutory method of designation. (Rec. 71, fol. 128.) It is only this special circular of May 22, 1883 (SS. 5725) that deviates from this method. (Rec. 72 to 74.) And the customs-officers in New York complied neither with the Regulations nor with the circular!

Even though the requirement of designating and examining at least a tithe of the packages be treated as directory, the importance attaching to the *package*, as such, and to the *invoice*—as is apparent from consideration of all our tariff legislation with regard to them—makes it certain that the customs-officers *must* confine themselves to the package and invoice in the assessment of duties; and must not so mix the contents of the packages as to render all trace of their action, by and upon the invoice, impossible.

We complied with the law; truly stated the character, quantity and quality of our importations, in the prescribed form, under the sanction and responsibility of oaths and the subjection of penalties, if wrong; and and we paid all the duties accruing thereon. The collector subsequently demands and exacts more, solely as the result of the proceedings which we declare and protest to be arbitrary and illegal. We bring this suit to determine the legality of his action and demand.

This is a suit "for the recovery of duties alleged to

have been erroneously or illegally exacted by the Collector". R. S., Secs. 2931 and 3011.

It is a statutory proceeding, superseding all common-law remedy.

Arnson v. Murphy, 109 U. S. 238, 243.
Birtwell v. Saltonstall, 63 F. R. 1004.

The sequence of sections in the revision is immaterial. (Sec. 5600.) In point of time, Sec. 3011 (reproducing act of 1845—5 Stats. 727) preceded sect. 2931 which is the fourteenth section of the act of June 30, 1864, c. 171. (13 Stats. 214).

Being in force together (120 U. S. 113, mid., 114) the earlier provision stands as when enacted, except just so far as it is qualified by the later ones.

That provision (Sec. 3011) gives to any person who has made compulsory payment to any collector "of any money as duties, when such *amount* of duties was not, or was not *wholly*, authorized by law an action to ascertain the validity of such demand", provided seasonable written protest set forth specifically "the grounds of objection to the *amount* claimed".

Those provisions which prevent re-examination into the correctness of a *value* ascertained by a properly-constituted board of appraisers, proceeding as directed by law, are not pertinent at this point of the present discussion.

Bailey v. Goodrich, 2 Cliff. 597.

Disregarding now, therefore, this single exception as to market-value, the importer is granted the privilege thus to litigate every other question of "*rate* and *amount*" involved in the collector's decision. The Government determines whether or not any suit shall be maintained to recover sums once paid into its treasury (106 U. S. 227);—and, in determining affirmatively, prescribes the conditions and method of procedure, *and the questions it will consent to litigate. (137 U. S., 329).*

It has provided different ways of deciding different questions.

Rev. Stats. Secs. 2901 *et seq.*, taken from the act of 1842, declare the value that is to be made the subject of inquiry, how it is to be ascertained, and the *modus procedendi* of its re-examination upon appeal.

The fifth section of the act of March 3, 1857, c. 98 (11 Sts. 195) provided for an original and appellate decision upon the single point whether goods were dutiable or free.

"The act of 1857 did not relate to a decision upon the rate and amount of duties to be charged, but to the decision of the Collector whether the goods were on the free list or not. . . . . The act does not, in terms, nor by implication, repeal the act of 1845 (R. S. 3011). That act still furnished the rule to be observed if the importer, admitting the goods to be dutiable, questioned the *rate and amount* of duties to be paid. In most cases the amount—and in many cases the rate—could not be ascertained until after examination and appraisement", etc., etc.

Barney v. Watson, 92 U. S. 453.

The erroneous assumption found on the cited page (*Ib.* and 120 U. S. 113-4) that the act of June 30, 1864, repealed that of 1845, does not weaken these observations.

The act of June 30, 1864 (now R. S. Sec. 2931) concurrently with the unrepealed act of 1845 (now R. S. Sec. 3011) provides the procedure to adjust upon appeal disputes as to the rate, or the amount, of duties upon importations.

U. S. v. Klingenberg, 153 U. S. 102.

The *rate* must necessarily affect the amount; while the amount may be wrongly computed upon an undisputed *rate*, through other errors than those of classification; but, in our case, both rate and (necessarily) amount were increased by classifying our sugars as possessing a degree of saccharine strength, above that stated in the invoice, and not lawfully attributed to

them; and these sections permit investigation of alleged error in any respect affecting rate or amount.

The wrong done us was in the collector's conclusion as to *rate*, consequent upon his adoption of an illegal statement of polariscopic test, and resulting in his exaction of an excessive amount.

The result to us of the acceptance of an exaggerated estimate of saccharine strength is precisely the same as if the quantity of sugar had been over-stated; though in *form* it causes the affixing of an erroneous *rate*. (22 Stats. 502). The rate per pound varies with the ascertained quality. *(Ib.)*

Congress has said that the *valuation* of the customs-officers shall be final; but there is still a field left for the operation of the sections on which the plaintiffs in error rely. Questions relating to the classification of imports, and consequently to the rate and amount of duty, are open to review in an action at law.

Hilton v. Merritt, 110 U. S. 106, bot.,

where the court adds that questions of valuation are concluded by the appraiser's determination only when they keep "within the power conferred upon them by the Statute". *(Ib.)*

At the top of the following page (107) is succinctly stated the reason for affirming the judgment against the importer in that case, to wit; because the evidence "tended only to show carelessness or irregularity in the discharge of their duties by the customs-officers, but *not that they were assuming powers not conferred by the Statute*" (110 U. S. 107 top)—which illegal assumption is precisely what we *do* show in the cause at bar.

BUTLER, J. . . . . .

"If any omissions or *irregularities* occur in the proceedings to levy the duty, the owner must make his appeal to the Secretary for redress, or thereafter be silent respecting them.

The suggestion of defendant's counsel, that such an appeal will not reach the appraisement, finds no support either in the terms or the spirit of the statute. It

is "the amount of duty . . . . to be paid on the merchandise" that the statute submits to the collector's decision; and it is that the appeal involves. If the appraisement is not made in pursuance of law, it is *no* appraisement; *if the duty is not ascertained and liquidated in pursuance of law the merchandise is not subject to its payment.* These questions (and the *latter* involves the entire proceeding—*every material step in it*) necessarily arise on the appeal. . . . . .

The amount claimed was so assessed and found to be due; the defendant however asserts that it was not *legally* assessed and found. As before stated, the statute referred *this* question to the Secretary, by whom it must be passed upon before it can reach the Court. The entire subject is submitted to him, in the first instance".

U. S. v. Sowers, 25 Int. Rev. Rec. 406.

"The right of action does not exist independently of the statute, but is conferred by it. . . . The Statute sets out with declaring that the decision of the collector shall be final and conclusive against all persons interested, *unless* certain things be done. The mere exaction of the duties is necessarily, the decision of the collector; and, on this being shown in any suit, it stands as conclusive *till* the plaintiff shows the proper steps taken to avoid it. These steps are all successively grouped together in one section, not only in § 14, act of 1864, but in R. S., 2931; *and the 'suit' spoken of in those sections is the 'action' given in § 3011*".

Arnson v. Murphy, 115 U. S. 584.

Whenever the requisite steps are taken, the collector's action is neither 'final' nor 'conclusive'; *i. e.*, it neither terminates the inquiry, nor binds anybody to aught that has been done therein. The whole matter is *res integra.*

Tucker v. Kane, Taney, 146.
Belcher v. Linn, 24 How. 522 bot.

Like the determinations of every competent tribunal, his decisions must be either final or nothing. Unappealed from, they are final; by an appeal they are va-

cated, as is the case with the judgments of every court from which an *appeal* lies and is properly taken —3 Dall. 327;—which is the usual method of reviewing all summary proceedings. *Ex. p.* Va. 100 U. S. 341 bottom.

All the law and facts of the controversy are before the appellate tribunal, "as if never tried before". Dane's Abdg. *h. t.*

Waterman v. Raymond, 5 Wis. 185.
King v. Sloan, 1 S & R, 78.
Moore v. Wait, 1 Binn. 219.
U. S. v. Sowers, 25 Int. R. Rec. 406.

The Secretary can subject the objections pointed out by the importer to the same scrutiny that the Collector could;—and that *he* could have corrected the errors of which we complain we take to be indisputable.

It must be noticed that this suit is not a mere action for money had and received; but is *one step in a continuous proceeding* to ascertain the exact amount which can *legally* be required of us as duties upon our sugars. (137 U. S., 324).

Certainly, the collector's decision upon and approbation of the *modus operandi* in ascertaining the rate and amount of these duties can be no *more* final than the appraisers' determinations of values are. But the latter are rendered *null* by any illegality or disregard of statutory directions in the action of the board, as well as by any incompetency to act of any member of it; whereby the power to act is lost.

It is not permitted to show that the assigned value was an *incorrect valuation;* but that, because of such illegalities, it was *no* valuation. *(Id.* 328–9.*)*

"The provision as to the finality of the appraisement is virtually a *rule of evidence* to be observed in the trial of the suit brought against the collector."

Auffmordt v. Hedden, 137 U. S. 329.
Robertson v. Frank, 132 *Id.* 22, 24.
Badger v. Cusimano, 130 *Id.* 39.
Gelbermann v. Merritt, 123 *Id.* 356.

There is no such rule of evidence as to the collector's decision, nor any such finality accorded to the proceedings of *any* customs officials in determining *rate* or amount, where the errors therein have been pointed out to the collector, as provided ly law.

U. S. v. Schlesinger, 120 U. S. 113.

If the *judicial* act of ascertaining value upon evidence, &c., can be deprived of its finality, and be absolutely nullified by legal incapacity or disregard of statutes on the part of an appraiser, *a fortiori* should the ministerial act of ascertaining the *quality* of the importation (to which the *rate* of duty inseparably attaches itself) by a disqualified person be fatal to the collector's decision to substitute that ascertainment and its attendant rate for those indicated, according to law and the regulations, upon our invoice.

In its bearing upon the subject let us recur to that of the selection of illegal and insufficient samples. It will be perceived that such selection not only produced wrong samples for comparison with the Dutch standard of *color*, but subjected them to the scrutiny of an unauthorized person to determine *quality* and rate.

So, as Judge GRAY once remarked, we complain that this was "a mis-trial improperly conducted."

VIII.

Compounding many samples into one mixture.

The number of bags in an invoice varied from 73 (in invoice number 7045) to 15,626, in invoice No. 7046 (Rec. 23, top) and 16,301 bags in invoice, No. 11,749. *(Id.* 22 bottom.*)* The number of bags bearing the

same plantation-marks we are unable to state, definitely; but it may easily be seen that it was very large, the examiner assuming it might be as high as 30,000 bags *(Id.* 14, fol. 26*)* though none of the *invoices* in suit are of more than 16,301 bags. Invoices were ignored, and plantation-marks alone regarded, in making the piles upon the wharf for sampling. Suppose one plantation-mark seemed to be borne upon ten thousand bags; that of the "drafts," varying from three to eight bags, five bags constituted an average draft; then there would be two thousand such 'drafts,' of which one hundred drafts (or *five hundred bags*) would be set aside as samples, and the same number for re-samples. *(Id.* 12, fol. 21 and 13, fol. 23.*)* Each alternate twentieth '*draft*' was samples, by taking samples of "the *packages* so designated by the *weighers*," *i. e.*, by their stencilling. *(Id.* 14, fol. 25.*)* The *weighers* made one *draft*-sample, of sugar from five bags. Hence, in the supposed case of ten thousand similarly-marked bags, there would be five hundred samples in little, half-pound, tin boxes. *(Ibid.)* If the sugar-examiner considered them all below No. 13 Dutch Standard in color, and so amenable to the polariscope, he made one *mixture* out of these five hundred samples as the sample to go to the laboratory. *(Id.* 15, fol. 28.*)* He there says of twenty-five hogshead-samples, he sent a *mixture* to the laboratory; so, naturally, there must have been many more ingredients to the compound, in the case of sugar in bags or mats.

From the record upon file in Merritt v. Welsh, 104 U. S. 696, this Court can judicially know (150 *Id.* 38, top) that "the presence of water in the sugars is found to interfere with uniform results" in their examination for duty, as affecting their color. (18 How. 415.) It also must be apparent that, in so delicate a matter as determining to the "fraction of a degree shown by the polariscopic test"—every such fraction increasing the duty (22 Stats. 502) and *contemporaneous* tests varying generally several tenths of a degree (Rec. 19, 20, fols.

36, 37 ; and pp. 62 to 70)—this examination of such a "hell-broth," compounded of multitudinous samples, would give no idea of the quality of the sugar in any individual package, as is required by R. S. sec. 2915 and the customs-revenue laws generally.

As well might all distilled spirits imported in similarly-marked casks, aboard one vessel, be mixed before applying the proof-test prescribed by R. S. sec. 2918.

IX.

Unauthorized persons tested these illegal samples.

That the fact is as above stated does not admit dispute.

That the laws, and particularly those provisions relating to the customs-officers at the port of New-York, did not permit them to be displaced and superseded by, or exchanged for, individuals (official or other) from any other port; having no commission to act in New-York, and having taken no oath as to the performance of duties there, is apparent from a reference to the sections cited in the stating part of this brief. (See *ante*, pp. 8 to 10.)

The removal of one merchant appraiser, and the substitution of another in his place, was held below, by Judge WOODBURY, and by this court, as "irregular, so as to make the appraisal invalid." Greeley v. Thompson, 10 How. *240.

Oelbermann v. Merritt, 123 U. S. 364-5.

Citation of this last case leads to a repetition of the observation that special qualifications are as much required of the New-York examiners (R. S. secs. 2940,

2941) as they were of merchant appraisers; and an official oath, which Messrs. Leary and Soule never took.

In the above-cited case (123 U. S. 364) the question was as to the possession of such knowledge in *fact* as to make the appraiser eligible to act; here, it is the possession of authority in *law* to act.

"The right of an importer, who has paid money, under a valid protest, to a collector of customs, for duties *illegally* assessed, to maintain an action for its return has been acknowledged by Congress and in this court. 5 Stats. 727; 10 How. 225. The ONLY inquiries in such an action are, *whether the duties have been* LEGALLY *exacted*, and does the protest conform to the act of Congress above cited."

Greeley v. Burgess, 18 How. 415.

It is a purely statutory action. Congress has exercised its right to determine the terms upon which such suit may be brought, by limiting the judicial inquiry to the question whether the collection of the amount of duties paid was authorized by law, or whether it was wholly or in part *illegally* exacted in respect of the objections to its legality set forth in a proper protest.

Arnson v. Murphy, 109 U. S. 243.
Auffmordt v. Hedden, 137 *Id.* 324.

Numerous decisions under the cited statute, and subsequent similar legislation, emphasize as *the* fundamental question to be judicially ascertained, that of "POWER IN THE OFFICER" of the customs.

Bartlett v. Kane, 16 How. 272., citing Aredondo, 6 Pet. 729.
Belcher v. Linn, 24 How. 522.
Hilton v. Merritt, 110 U. S. 106 bot.
Badger v. Cusimano, 130 *Id.* 43.
Auffmordt v. Hedden, 137 *Id.* 324 bot.
Muser v. Magone, 155 *Id.* 247.

Here, there was no *power* in the Secretary of the Treasury to direct a Boston appraiser to detail subor-

dinates from that custom-house to serve at the port of New-York; no *power* to in *him* to dictate a *larger* number of samples than the law indicated; no *power* to substitute an 'odd' or 'even' proportion of 'drafts,' selected upon the wharf, for a specific designation of 'packages,' by the *collector*, to be made upon the *invoice*. It was *illegal*, and beyond his *power*, to affirm, upon our appeal, the illegal action and exaction of the New-York collector. That collector had no lawful authority to carry into execution the unauthorized instructions of the Secretary; no *power*, of *his own* mere motion, to substitute 'plantation' lots and marks for invoice packages and marks; no *power* to base his assessment and exaction upon the illegal action had upon the wharf and at the appraiser's office, thereby affirming, ratifying and adopting the same, after these illegalities (with respect to the several entries in suit) had been called to his attention by our protests. The appraiser at Boston had no *power* to send Messrs. Leary and Soule to take part in the customs-service in New-York. These gentlemen had no *power* to act in and control the classification of our sugars for duty, by their application of the polariscope. The appraiser at New-York had no *power* to authorize or sanction the action of these Bostonians; nor had he the slightest authority from any source, nor the *power*, to mingle samples—so taken from numerous hogsheads and bags as to show the quality of the sugar in these packages—into the one conglomerate sample, which was sent into the laboratory, and its solution submitted to the polariscopic test.

If, from the entry to the enforced payment of the additional duties of which alone we complain, the statutes can be ignored and overridden by the successive functionaries dealing with our importations, then—so far as the imposition of taxes upon the citizen is concerned—we have only a government of men, and not of laws.

"Discretion in the custom-house officer should be limited as strictly as possible. It has been said, with much truth, 'Where law ends tyrrany begins.'" (104 U. S. 702, top.)

Statutory limitations upon such discretion which can be utterly disregarded with impunity, without prejudice to the result of arbitrary action, are no limitation at all.

The court will bear in mind that we are not seeking to exempt our sugars from taxation. We paid the amount of duty *prima facie* collectible upon them, without demur. We only protest against having to pay an *excess* of duty that owes its entire existence to the unauthorized course of procedure which we have proved.

Taking upon us the burden of proving the collector to have acted wrongly in making this additional exaction, we have fully established our assertion of its illegality;—and now ask to be relieved from an assessment clearly illegal.

There can be no tax due from a citizen but a *legal* tax; and the sum we paid under protest is *not* a legal tax.

The judge presiding at the trial, after considerable hesitation (as he said) directed a verdict against us upon the theory that Messrs. Leary and Soule were *de facto* officers. This assumption we believe erroneous in law; and that the doctrine itself has no application to suits brought under the statute expressly to test the legality of an assessmment of imports for duty.

We will first examine into the doctrine itself; and then consider whether it can be applied to cases like the present.

X.

De facto officers and their acts.

"*Nullæ sunt occultiores insidiæ, quam quæ latent in simulatione officii, aut in aliquo necessitudinis nomine*". CIC.

We will confine this branch of the present argument to considering what constitutes an officer *de facto*; and to what extent, under what circumstances, and with what qualifications, the acts of such a person are, or are not, subject to legal scrutiny, challenge and impeachment.

Let us premise that, in almost every instance where adjudications have been made, it is only the acts of an officer *de facto*, "with color of legal title" to the office, that have been deemed valid "so far as they concern the public", or affect the rights of "third persons"; and which cannot, by such persons, be "collaterally" attacked.

I. What is an officer *de facto*?

Chancellor WALWORTH'S definition has been often quoted and (so far as we have observed) never impugned nor qualified by any direct decision: —

"An officer *de facto* is one who comes into a legal and constitutional office *by color* [ital. in original] of a legal appointment or election to *that* office"; etc. Peo. v. White, 24 Wend. 539.

There must be some color or election or appointment, by the electors or appointing power to *that* elective or appointive office; and a claim under *that* title to perform the functions of *such* office; in the discharge of which the act complained of was done. Peo. v. Cook, 8 N. Y. 89 mid.

The opinion of the Court below in this case observes

MASON, P. J. " I apprehend, while the law regards the acts of officers *de facto*, acting under color of legal title, valid as regards the public and third persons, it does not go the romantic length of giving sanction, in any case, to the acts of an officer where there is a plain usurpation of the office, without any show of legal title. The law holds the acts of an intruder void, both as regards the public and third persons." Peo. v. Cook, 14 Barb. 289.

Twenty years later, the same Court repeated;—

" To constitute a person an officer *de facto*, a mere claim [Leary and Soule made none] to be such officer, and exercising the duties of the office, are not sufficient. It is well settled that there must be color for the claim, *and a colorable title to the office.*" Rochester v. Clarke, 60 Barb. 248. Peo. v. Peabody, 6 Abb. 228.

The opinion in 60 Barb., after citing *24 Wend. 520* and other N. Y. authorities quotes thus from a Connecticut case;

" An officer *de facto* is one who exercises the duties of an office under color of right *by virtue of an appointment or election to that office.*"

Plymouth v. Painter, 17 Conn. 585.
King v. Bedford, 6 East, 368-9.
Fitchburg v. Grand, 1 Allen, 557.

In New Hampshire, it was said that one who had been, by the Court of Common Pleas, declared elected road commissioner, and thereupon qualified and commissioned, was *not* a *de facto* officer after the Superior Court had, upon mandamus proceedings, declared he was not elected, although (pending the entry of that judgment in the Common Pleas) he continued to sit and act with his colleagues, etc.; *because*, after the Superior Court's decision he was not in by " color of law ".

Portsmouth, 19 N. H. 115.
Cooke v. Halsey, 16 Pet. 85, 86.

Disregarding, however, the views of all other tribunals, it is sufficient for us that the Supreme Court of the U. S. has thus defined a *de facto* officer;

"An officer *de facto* is not a mere usurper, not yet within the sanction of the law, but one who, *colore officii*, *claims* and assumes to exercise *official* authority, is reputed to have it, and *the community* acquiesces accordingly."

Hussey v. Smith, 99 U. S. 24, citing
Wilcox v. Smith, 5 Wend. 231,
Gilliam v. Reddick, 4 Ired. L. 368, and
Brown v. Lunt, 37 Me. 423.
Ah-Lee, 5 F. R. 909 et seq.
Creighton v. Com. 83 Ky. 147.

Having referred to the failure to take an oath, or some such irregularity, after a *legal* election or appointment, the Court of Appeals add;--

"This is clearly distinguishable from a case where there is *an entire want of power to make the appointment.* The question here affects the origin of the appointment, and the right to hold the office by virtue thereof, and is not a mere irregularity occasioned by the failure of the officer to take the oath required by law. *There is a wide and marked distinction between the right to act at all and the failure to comply with some statutory requirement,* in assuming power conferred by an appointment to discharge the duties of an official position."

Lambert v. Peo., 76 N. Y. 231.
Rex v. Verelst, 3 Campb. 432, *436.*
Peo. v. Albertson, 8 How. Pr. 365.

"Color of an election", etc., we find constantly spoken of, as an element pertaining to the validity of the acts of a *de facto* officer, in early and recent federal decisions. 16 Pet. 85 *et seq.*

Mining Co. v. Bank, 5 Sawy. 258.
Same, 104 U. S. 196, end of Op.
Co. v. Douglass, 105 *Id.* 730.

In this matter, we were entitled to have our sugar tested by an examiner of the port of New York, to

whom the Statutes assign this function. R. S. Secs. 2536, 2538, 2539; and this last-cited section shows that no employee, of any grade, could be engaged in any department of the appraiser's office, except under a regular appointment, upon his nomination.

A man cannot be a *de facto* officer, unless he assumes to fill a known, definite *office*, and to discharge *its* functions.

Mr. Leary made no such claim. He was an examiner in Boston; in New York, he was not. He did not assert any such title. (Rec. 17 to 19, fols. 32 to 36.)

Creighton v. Com. 83 Ky. 147.

Being in charge of the polariscope in Boston, he is, through the *appraiser* at that port *detailed* for that duty in New York; and the Secretary's letter states it to be a *temporary* transfer. Later, Mr. Soule is under "*detail*" for "temporay duty" in New York, where he never claimed to hold any office. (Rec. 20, fol. 37.)

It was *not* Mr. Leary's official character, but his professional skill, that was put into requisition.

It was *only* as "*chemist* in charge" that he acted, or professed to act. (Rec., 19, fol. 36.)

It was as the officer "in charge of the polariscope" that he was detailed to like duty in New York by the Boston Appraiser, in obedience to the Secretary's letter of March 22, 1888. (*Id.* 16, fol. 30.)

His supervision of polariscoping in New York was expressly recognized to be *dehors* and "*in addition to* his regular duties as examiner (No. 6, class 4) at Boston." (*Id.* 19, fol. 35.)

There can be no more question as to the real character of the claim set up for the Secretary than there can be of its illegality. It was an assertion of his right to 'detail' and send around, from port to port, at his pleasure, any person in the customs service, just as is done in the military and naval service; regardless of the circumstance that the statutes allowing the employment of these persons confined it to the designated

localities for which they were appointed; and that *Sec. 2941 made a disqualification in New York which was not applicable to any other port* in the country; and that the fifth section of the act of Aug. 15, 1876, prohibited the employment of persons beyond the provisions of law. (19 Sts. 169.)

To treat what was done as an irregular attempt to fill an office here—or, in other words, irregularly to create a New York officer—is to ignore the truth. The intent and fact were that Mr. Leary, being and remaining only just what he was (Examiner No. 6 of Class 4 in Boston) should be temporarily *detailed* to act as "*Chemist in charge*" in New-York.

That position he assumed *and none other*. (83 Ky. 147.)

Now, *if the law recognized no such office* (as it did not) then *then there could be no such de facto officer.*

Norton v. Shelby, 118 U. S. 446-449,

"concluding, upon this last-mentioned page, that

"where no office legally exists, the pretended officer is merely a usurper, *to whose acts no validity can be attached.*" (118 U. S. 449.)

No action of the Secretary could transfer the duty of examining merchandise imported into New York from the appraiser, assistants and examiners of that port to an unappointed, unsworn, "chemist in charge".

Jester v. Spurgeon, 27 Mo. Ap. 480.

In an early Kansas case, Co. Atty. Brewer made the contention we now do, and was sustained.

McCahon v. Commrs. 8 Kans. 437.

After Mr. Brewer had taken a seat upon its bench, that Court said;—

"From considerations of public policy, the acts of a *de facto* officer are valid and binding as to the public and third persons; yet, where there is no valid office, constitutional or statutory, a person, *by pretending to exercise an office unknown to the law*, cannot be deemed an

officer *de facto*. There can be no *de facto* officer where there is no office" [such as he assumes to hold and administer.]

Hinkle, 31 Kans. 715.
Snyder, 64 Mo. 62 bot.
1 Dillon Mun. Corp. § 276, § 531 *n*.
Decorah v. Bullis, 25 Iowa 12.
Welch v. St. Genevieve, 1 Dill. 136.
Carleton v. Peo. 10 Mich. 250.
Tinsley v. Kirby, 17 So. Car. 1, 8.
Jester v. Spurgeon, 27 Mo. Ap. 480.
Cohn v. Beal, 61 Miss., 398.
State v. Blossom, 19 Nev. 312.

II. Mr. Leary neither did (Rec. 19, fol. 36) nor could claim to be an appraiser, assistant, or examiner, in New York. The testimony shows that there were such officers appointed and at work here. *(Ib.* 16, fol. 29.*)*

The reason for conceding validity to the acts of one not *de jure* the officer entitled to perform them is the public interest, that the function may not fail, through the want of some one to discharge it; and the question has usually arisen in some dispute as to the regularity of the election or appointment to *the* office to which the duties indisputably attach.

Hence, if there be a *de jure* officer in possession of the office, there cannot be one *de facto*, having equal and co-ordinate powers. The existence and incumbency of the *de jure* excludes the *de facto;* for whose intervention and action no public necessity exists, and which public policy will not recognize.

Rex v. Lisle, Andws. 163.
King v. Colchester, 2 T. R. 260.
Hildreth v. McIntire, 1 J. J. M. 206, quoted in 118 U. S. 442, 443.
Cronin v. Gundy, 16 Hun, 524, affirmed in 97 N. Y. 271.
Peo. v. Peabody, 6 Ab. Pr. 236.
Conover v. Devlin, 15 How. Pr. 479.
Boardman v. Halliday, 10 Paige, 232.

During all the period covered by our entries in this case, Mr. McMullen was, *de jure* and *de facto*, the appraiser at this port, empowered to direct and control the examination of all merchandise sent to his stores by the collector; and to have that examination made by subordinates selected for that purpose in conformity with law.

From the discharge of the general functions of his office, neither the Secretary nor Mr. Leary sought to oust him; but did so as to this special matter of polarizing sugar. Without nomination or desire of the Appraiser, Mr. Leary, as 'chemist' took charge and control of this branch of the appraiser's duty. (Rec. 16, fols. 29, 30; 19 fol. 36.)

There cannot be such a legal anomaly as a *de jure* incumbent of a statutory office, acting as to every item but one of his official duty, and a *de facto* officer as to that item!

Some testimony was elicited by the United States Attorney showing that, in the mechanical routine of procedure, the Appraiser's stamp was impressed upon our papers (without Mr. M. even seeing them or knowing aught about it) by a boy in his office. (Rec. 16, fol 29.) It was not his stamp (nor, indeed, his mere autograph) but his controlling hand and mind that we were entitled to the benefit of, and of which we were deprived by this unauthorized exercise of power by (or, rather, under the name of) the Secretary of the Treasury.

The thing which controlled all subsequent proceedings, initialing, stamping, liquidating, etc., and the amount finally exacted as duty was Mr. Leary's return of "test for classification." (Rec. 62 to 71, fols. 112 to 127.)

III. It is only as to third persons who are *compelled* to deal with a *de facto* officer, as the only functionary

to discharge the duty, that his acts in office are treated as valid, " to prevent the failure of justice."

2 Kent's Com. 295.
Peo. v. Collins, 7 Johns. 554.
Cronin v. Grundy, 16 Hun, 524.
Conway v. St. L. 9 Mo. Ap. 490.

Within the meaning of the law and decisions, under the facts and statutes pertaining to the present subject, the collector was not a ' third person ' with relation to the proceedings of which we complain.

As to the original assessment and collection of duties at this port, he could say with Henry IV;—" L'état c'est moi." He was the first person, singular.

Elmes on Customs, 87, § 219 *et seq.*
Rev. Sts. Secs. 2614, 2615, 2901, 2831, and *passim.*

The statutory requirement of a specific written, protest is

" to draw the attention of the *collector* to the substance of the objection, to the end that *he* may ascertain the precise facts, and cure the defect, if one which is curable exists."

Burgess v. Converse, 2 Curt. 223.
Curtis v. Fiedler, 2 Black, 481.
Nichols v. U. S. 7 Wall. 126, 127.
Davies v. Arthur, 96 U. S. 149, 151.
Arthur v. Dodge, 101 *Id.* 37.

While he still had the power and means to have it examined properly, and in conformity with the Statutes, we complain to the Collector—who sends our goods to the appraiser's store for *legal* examination—of *his* (deft's.) assessment of duty, based by *him* upon an unofficial, irregular, illegal examination of our sugars.

Mr. Magone's official relation to these goods, and to the examination of them for duty, precludes him from claiming the benefit of the principle suggested:

§ 1. "Originally, 'privy' signified a friend or acquaintance, as opposed to a stranger; and, hence, privity means knowledge". . . .

§ 2. "In its secondary sense, privity denotes a peculiar relation in which a person stands, either to a transaction or to some other person." 2 Rap. & Law. Dic. *h. t.*

"The term 'privity' means mutual or successive relationship to the same rights of property".

McDonald v. Gregory, 41 Iowa, 516.
Phila. v. Quigley, 21 How. 211.
Hill v. Prov. 113 Mass. 500 mid.

Judge COWEN, writing of a *de facto* officer, says:—

"I know the cases have gone a great way. But *they have stopped with preventing mischief to those who confide* in officers acting without right."

Green v. Burke, 23 Wend., 502.
Peo. v. Peabody, 6 Ab. Prac., 234.

This is not a case of confidence. The authorities show the idea to be that one who is, *ex necessitate, compelled* to confide in one possessing the indicia of public office shall not be made a victim of honestly misplaced confidence.

Conway v. St. Louis, 9 Mo. Ap. 490 bottom.

The party who procured the proceedings cannot obtain protection from them.

Savacool v. Boughton, 5 Wend. 181 top.
Livingston v. Mott, 2 *Id.* 607.

Redfield, J. "It is said that the surveyor was an officer *de facto*, and therefore his acts are valid. This may be true, so far as third persons are concerned, but not when the officer himself, or *those under whose authority he is put in motion*, are called upon to justify his proceeding. *They* must show his right to exercise the functions of the office".

Cumming v. Clarke, 15 Vt. 653.
Howland v. Willett, 9 N. Y. 174.
Root v. Wagner, 30 *Id.* 17.

St. Luke v. Matthews, 4 Dess. 578; 6 Am. Dec. 619.

Looking through all forms to substance, we know that the collection of these duties was a matter in which Mr. Magone, and the Treasury officials in Washington of every grade, had as little personal interest as this Court.

Our money has gone into the coffers of the United States in the course of a method of procedure prescribed by Congress for the collection of customs revenue; as one step in which proceeding we have seasonably and specifically objected to something done therein, whereby the sum required of us was unlawfully increased; hence we ask to have that excess refunded by the United States.

The statutory method of raising and presenting the tax-payer's objection to the proceeding in fieri is NOT *a 'collateral' attack upon it.*

This is substantially the same as if the United States were claimant of so much money; basing its claim upon an examination which in law was no examination.

What we complain of is that our goods have not had *such* an examination as we were entitled to by law. That such a complaint is good ground of protest, which the collector should have inquired into and remedied, if found well founded, we understand the Supreme Court decisions to maintain.

In the case before him at Circuit, CURTIS, J., said:

"Now here the protest objects that the appraisers did not faithfully examine the goods. This certainly drew the attention of the collector directly to the inquiry *what examination was made?*"

Burgess v. Converse, 2 Curt. 223.

This certainly suggests the obligation of the collector to see that *such* an examination as the law requires as the basis of duty has been made, by officers holding *de jure*,

before exacting the amount of duty resulting from their action. He could not ask the importer "Am I my brother's keeper?" any more successfully than Cain put that question. He was.

Upon appeal of the Burgess case, the appellate court divided only upon the sufficiency of the protest to raise the objection; being unanimous as to the effect of the want of examination, properly shown; "which could easily have been removed" (observes TANEY, C. J., dissenting) "by another appraisement, if it had been brought to the notice of the Collector in the protest".

Greeley v. Burgess, 18 How. 417–8.

The opinion of the Court in Oelberman v. Merritt, 123 U. S. 364 *et seq.* confirms this view.

It is there said that the importer was entitled to have an appraiser possessing certain qualifications; that the possession of them was not to be conclusively presumed from the fact of his selection, but could be controverted by testimony, his own and other. So we were entitled to an examination by the officer provided by law; could protest to the collector and Secretary that we had not had it; and could sustain our protest by proof.

Neither Leary nor Soule were so much *de facto* officers as the merchant appraiser was, in the Oelbermann case.

Oelbermann v. Merritt, 123 U. S. 356.
Mustin v. Cadwalader, *Id.*, 369.

If permissible to show that the duty was affected by the disregard of the Statute as to the course of procedure, a *fortiori* ought we to be allowed to object that it was affixed (in effect) by one who had no right to act therein at all.

Comparing the Supreme Court decisions, it is worthy of observation that while Greeley v. Burgess, 18 How. 413 was based upon the omission to examine as re-

quired by law, Oelbermann v. Merritt, 123 U. S. 356, also decides upon *the necessity of possessing statutory capacity to examine at all*—precisely our case.

Merritt v. Portchester, 71 N. Y. 312 etc.

IV. Any claim of a public or general acquiescence in the discharge of the duty of polariscoping by Mr. Leary or Mr. Soule is refuted by the evidence and the dates; even if such considerations could affect our rights.

In the old case of King v. Bedford Level, 6 East. 369, Lord ELLENBOROUGH, C. J., remarked:—

"An officer *de facto* is one who has the reputation of being *the officer he assumes to be*, and yet is not a good officer in point of law. 1 Ld. Raymond, 660. In this case, Gotobed was never more than a deputy; and therefore, after the death of his principal, he never *could* have had the reputation of being more than deputy". 6 East, 368-9.

State v. Carroll, 38 Conn. 449, quoted in 118 U. S. 446.

Authorities, *ante* p. and *passim*.

Mr. Leary was never assumed to be more than "chemist in charge". He expressly *disclaimed* being a New York officer. (Rec. 19, fol. 36.)

Mr. Soule did the same. *(Id.* 20, fol. 37.*)*

Each had the reputation of being just what he was; a Boston examiner, temporarily transferred over here; and Mr. Leary made 'chemist in charge of polarization'. And however skillful professionally, he was not (legally) a good officer, in *that* position;—which is one unknown to the law.

He came in April, 1888; Mr. Soule June 4, 1888; and June 9th, 1888, we protested, on our first entry of sugar included in this action, against the illegality of the polariscopic examination thereof; and continuously thereafter we protested, from day to day, as we had sugar to be dutied, until these Boston officers returned to their proper place and functions.

There is no evidence that anybody, interested in this matter, acquiesced; nor that any other importer's sugar was so polariscoped. If presumptions could be indulged, it would hardly be supposed that "the public" acquiesced (or knew anything about it) when it is shown how persistently we objected, and no other testimony upon that point is (if it could be) introduced.

XI.

De facto doctrine inapplicable.

It is a necessary deduction from the hereinbefore cited decisions, relating to the right to protest against and recover duties illegally assessed and collected, that the *legality* of the proceedings can first be specifically challenged before the collector, to the end that a legal procedure may be taken; that, by appeal to the Secretary, the same question can be submitted to him; and, if affirmed by him, can be judicially determined. If there is any right to protest to the collector that a disqualified or unauthorized person has examined or valued our goods, for the purpose of fixing the classification and rate and amount of duty which he assumes to exact, there is the same right to call that fact to the attention of the Secretary and of the court; and the existence of that right has been too long and too recently recognized to be now denied. The question is, have the exacted duties been ascertained in the manner provided by law:—and this question must be answered negatively if their sole basis is their ascertainment by persons not authorized to ascertain.

Arnson v. Murphy, 109 U. S. 238.
Same v. Same, 115 *Id.* 579.
Oelbermann v. Merritt, 123 *Id.* 356.
Auffmordt v. Hedden, 137 *Id.* 329.

U. S. v. Sowers, 25 Int. R. Rec. 406.
Greeley v. Thompson, 10 How. 225,

where the merchant-appraiser, wrongfully substituted by an act of power less arbitrary than that exercised in our case, certainly held more of a *de facto* official relation to the goods appraised than Messrs. Leary and Soule held to ours; nevertheless the Circuit Court, and this Court, there held that the collector had no authority to exact a duty based upon such an appraisement, and it was recovered.

Greeley v. Burgess, 18 How. 415.

XII.

Conclusion.

The importers having shown that the grounds of dissatisfaction of which they notified the Collector were well-founded, the verdict and judgment against them should be reversed, and judgment entered in their favor.

EDWIN B. SMITH,
120 Broadway, New-York,
Of Counsel for Plaintiffs.

CASE No. 14765.

In the Supreme Court of the United States.

OCTOBER TERM, 1894.

HAVEMEYERS & ELDER SUGAR REFINING Company, plaintiff in error,
v.
DANIEL MAGONE, COLLECTOR OF THE port of New York.
} No. 243.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

BRIEF FOR DEFENDANT IN ERROR.

This is one of the usual importers' actions for moneys paid under protest. The case involves sugars imported into the collection district of New York from June to October, 1888, inclusive. The amount demanded in the complaint, without interest, is $67,824.23. The action was tried before Judge Lacombe and a jury February 4, 1891, and a verdict directed for the collector. The only question involved was as to the legality of the procedure adopted by the custom-house officials in the examination of the sugar.

STATEMENT OF FACTS.

The sugars in question were all below No. 13 Dutch standard in color (p. 10). They were hence classifiable under paragraphs 235 and 236 of the tariff act of 1883:

> All sugars not above No. 13 Dutch standard in color shall pay duty on their polariscopic test as follows, viz:
>
> All sugars not above No. 13 Dutch standard in color, all tank bottoms, sirups of cane juice or of beet juice, melada, concentrated melada, concrete and concentrated molasses, testing by the polariscope not above 75°, shall pay a duty of $1\frac{40}{100}$ cents per pound, and for every additional degree or fraction of a degree shown by the polariscopic test, they shall pay $\frac{4}{100}$ of a cent per pound additional.

The sugars in each invoice represented various plantations, and were distinguished by different plantation marks, the facts being similar in that respect to those of the recent Sumatra leaf tobacco case. (*Erhardt* v. *Schroeder*, 155 U. S., 124.) Prior to June, 1888, it had been the custom to examine imported sugars without reference to the plantation marks. The custom was now changed, and the collector of the port of New York directed the surveyor to separate certain cargoes according to the different brands (pp. 10, 11). Separation in this manner continued up to September (pp. 13–15), with the approval of the Secretary of the Treasury and in pursuance of a method of investigation in which the State Department also was taking part (p. 74). By instructions of September 1, 1888, the Treasury Department modified its prior order, and with a view to expedition and economy in its

examination, made it thereafter a matter discretionary with the collector whether or not "to require the separation and sampling by plantation marks of cargoes of sugars, in order to afford better protection against fraudulent practices" (p. 75).

The sugars in question were all separated and sampled according to plantation marks. The samples were drawn from selected packages on the wharf by official samplers (pp. 13–15, 20–21). For economy and convenience, or for whatever other reason, the system adopted was to mingle together all the samples of each mark so as to obtain a fair mixture. One sample of the mixture was retained by an official known as "an examiner of sugar." The duplicate, bearing a mark affixed by him, was sent to the custom-house laboratory and there examined with the polariscope. The experts in the laboratory had no means of knowing whose sugar it was or where it came from (p. 15).

Prior to the period in question, one Scherer had been the polariscopist in the laboratory. He seems to have had the rank of "examiner" at the New York custom-house. He was removed about March 22. While Scherer was polariscopist in New York, one J. T. Leary held a similar position in the district of Boston and Charlestown, Massachusetts. Immediately after Scherer's removal, Mr. Leary was detailed by the Secretary of the Treasury to act as polariscopist in New York, and shortly afterwards Mr. C. S. Soule, also an examiner in the district of Boston and Charlestown, was detailed to assist Mr. Leary. These gentlemen reported to the appraiser at the port of New York when they arrived, but were not at all under

his control or direction. One of the New York examiners was transferred to Boston at the same time. Messrs. Leary and Soule had taken oaths of office at the time of their appointment in Boston, but neither of them took any such oaths in New York (pp. 16–20). In other words, they were regarded as still Boston officials, but present in New York on a temporary detail. As such they polariscoped all of the sugars in question.

The protests in this case are three in number.

The first (pp. 42–3) makes the following objeticons:

> (1) That the packages of sugar from which samples were drawn by the United States Government employees for polarization and appraisement were not and are not the lawful packages from which to take samples for the purpose stated, the same, without designation thereof on the invoice by the collector, having been selected with reference to marks not on the invoice * * * contrary to * * * sections 2901 and 2939, Revised Statutes.
>
> (2) That the polariscope tests * * * were improperly and illegally made or caused to be made by a person who has not been appointed an examiner for the port of New York by the Secretary of the Treasury on the nomination of the appraiser, as provided by section 2940, Revised Statutes.
>
> (3) That the return or certification of the so-called appraisement upon the invoice of the sugars in question has been made or certified by an examiner who did not appraise by polariscope tests the sugars in question, and that the so-called appraisement and the liquidation of the collector do not show that the sugars in question have been sampled or appraised by the polariscope for duty; and
>
> (4) That the person who has made or caused to be made the so-called appraisement of the sugars in ques-

tion by polariscope tests, on which duties have been assessed on the sugars, is not competent for such service, and is not authorized by law to perform such service at the port of New York, and we have reason to believe is not authorized by law to perform such service at any port.

This protest further claimed that the sugars were liable to a less rate of duty. No testimony as to the actual standard of these sugars is, however, afforded.

The second protest (pp. 48–9) and the third protest (pp. 58–9) differ only in being less full.

ARGUMENT.

I.

As both parties moved for a verdict, and neither asked to go to the jury, the plaintiffs thereby conceded that they were not entitled to a reversal unless they were entitled as matter of law to the direction of a verdict. They can not claim that there is anything in the case for a jury to consider. (*Beuttell* v. *Magone*, U. S. S. C., March 11, 1895.) That there is no question of fact in the case seems to be conceded.

II.

The plaintiffs are to be restricted to the claims which they particularized in their protests. Claims which are forgotten, or which are not particularized so that the collector an perceive precisely what objection is being made to his procedure, are unavailable in the courts. (*Herrman* v. *Robertson*, 152 U. S., 521, and cas. cit.; *Presson* v. *Russell*, 152 U. S., 577; *Norcross* v. *Greely*, 1 Curt.,

114; *Tucker* v. *Maxwell*, 2 Blatchf., 517; *Stalker* v. *Maxwell*, 3 Blatchf., 138; *Mason* v. *Kane*, Taney, 173; *Thomson* v. *Maxwell*, 2 Blatchf., 385; *Pierson* v. *Maxwell*, id., 507; *Focke* v. *Lawrence*, id., 508; *Warburg* v. *Maxwell*, 3 Blatchf., 382.)

This disposes of the claim that there was irregularity in the system of mixing samples—a system which seems, however, to have been very sensible as a means of reaching the average quality of each plantation mark, the object for which the whole system of selecting packages and sampling was established.

III.

The system of sorting by plantation marks was also lawful and proper. It is, of course, probable, that there are differences in the lots of sugar from different plantations, dependent on variations in the soil, management, etc. Similar variations in Sumatra leaf tobacco between different plantations were described in the record in the Schroeder case. It was, therefore, a proper precaution for the Treasury Department to experiment for a few months by sorting on the basis of plantation marks instead of taking every tenth package in the invoice.

The importers here appeal to §§ 2901 and 2939 of the Revised Statutes, which, as they claim, force the collector to make his selection by marks on the invoice and without reference to the plantation marks found on the packages. At a port like New York, with its enormous business and meager dock facilities, this would, of course, in the case of such bulky articles as packages of sugar, be extremely

difficult and almost impracticable. It was entirely disregarded by the authorities, which selected sample packages as they came off the ship. There is, however, no such statutory regulation with reference to the port of New York as plaintiffs suppose. § 2939, specifically confined in its operation to that port, and not containing the requirement referred to, is the only statutory provision which the collector of that port is bound to consult upon this subject. By familiar rules of statutory construction it supplants § 2901 *pro tanto*.

§ 2939 is as follows:

> The collector of the port of New York shall not, under any circumstances, direct to be sent for examination and appraisement less than one package of every invoice, and one package at least out of every ten packages of merchandise, and a greater number should he, or the appraiser, or any assistant appraiser, deem it necessary. When the Secretary of the Treasury, however, from the character and description of the merchandise, may be of the opinion that the examination of a less proportion of packages will amply protect the revenue, he may, by special regulation, direct a less number of packages to be examined.

It was not necessary, however, for the collector to follow strictly the provisions even of § 2939. He did not, as a matter of fact, direct that any of the packages should be "sent" anywhere for examination. They were examined on the wharf.

Sugar was not, under the act of 1883, one of the articles required to be appraised. Its dutiability was regulated not by valuation, but by color and by polariscopic

tests. § 2939, therefore, if it applied to sugar at all, was directory and not mandatory. (*Erhardt* v. *Schroeder*, 155 U. S., 124, 130.)

But it is submitted that the section does not apply at all to cases where no appraisement—that is, no valuation—is required. In such cases it is within the discretion of the collector, subject to instructions from the Secretary of the Treasury, how thoroughly he should make his examination. The importer is not bound by the result, as he is by the valuation. The requirement concerning the number of packages to be examined is therefore not simply directory; it is not intended to apply to the case at all, and is inapplicable.

The case of *Burgess* v. *Converse* (2 Curtis, 216; 18 How., 413), so often referred to, arose under the tariff of 1846, which was entirely *ad valorem*.

We assume, therefore, that it is unnecessary for us to repeat the arguments set forth in the briefs filed here on behalf of the Government in *Erhardt* v. *Schroeder*, *supra*, and less fully in *Origet* v. *Hedden*, No. 19 of the present term of court, to the effect that the last sentence of § 2939 shows the whole section to be for the protection of the Government and not that of the importers.

It may further be remarked that the special provisions of the same chapter of the Revised Statutes in regard to classification of sugar show that it was not intended that § 2939 should apply to this case.

> § 2914. The standard by which the color and grades of sugar are to be regulated, shall be selected and furnished to the collectors of such ports of entry

as may be necessary by the Secretary of the Treasury, from time to time, and in such manner as he may deem expedient.

§ 2915. The Secretary of the Treasury shall, by regulation, prescribe and require that samples from packages of sugar shall be taken by the proper officers in such manner as to ascertain the true quality of such sugars; and the weights of sugar imported in casks or boxes shall be marked distinctly by the custom-house weigher, by scoring the figures indelibly on each package.

IV.

Plaintiff's main contention seems to be that it was entitled to have its sugar examined by an "examiner" technically so called; wherefore it was illegal and void to have it examined by any person commissioned solely from the port of Boston.

This assumption is entirely erroneous. "Examiners," in the district of New York, are strictly officers belonging to the appraiser's department. So far as their duties are regulated by statute, they are to aid the assistant appraisers. (Rev. St., §§ 2538, 2940.) The latter take oath to "examine and inspect such goods, wares, merchandise as the appraiser may direct, and truly to report to him the *true value* thereof according to law" (§ 2615). The appraiser takes oath to "direct and supervise the examination, inspection, and appraisment, according to law, of such merchandise as the collector may direct pursuant to law, and to cause to be reported to the collector the *true value* thereof according to law" (§ 2614). The statutory duties of the appraisers, assistant appraisers, and "exami-

ners" at New York are thus confined to the valuation of imported goods. Whatever other duties they perform are not required of them by statute, but by the Secretary of the Treasury; except certain special duties cast upon them by statute, as by § 2938. There are no "examiners" in the district of Boston and Charlestown except for the examination of drugs (§ 2529). The commissions of Messrs. Leary and Soule did not constitute them "examiners" in the meaning of either section, but simply made them custom-house clerks who, for convenience, were designated by that name.

The Secretary of the Treasury has a very wide discretion (§§ 249, 2652, 2689) and a very large appropriation (§ 3687) for the purpose of administering the customs laws. Incidental references in the statutes show that there are classes of custom-house officials the very name of whose office is departmental and not statutory in its origin. When the act of 1883 provided for polariscoping it impliedly provided also for the appointment of polariscopists. The Secretary of the Treasury was therefore obliged to appoint persons to perform this service, and pay them out of his general appropriation. He was at liberty to give them what name he pleased. He chose to give them the name of "examiner," which represented also a statutory office of one kind in New York and another kind in Boston, in neither case strictly applicable in its statutory use to a polariscopist. He might, perhaps, more properly have termed the new official a "verifier," another classification of officials not provided but recognized by the statutes (§§ 2745, 2941); or he might have called him something else. This was a matter of discretion.

V.

The power of the Secretary of the Treasury to detail officers from one port to another has, we believe, never before been questioned. It is sometimes a very necessary power in case of great press of business at one port. A notable case was that of the World's Fair, when there was a large detail to Chicago of officials from various parts of the country. Similar details have been made for the purposes of tariff investigations, of the Pan-American Congress, the California Midwinter Fair, &c. Sometimes business at a small port requires the detail of an expert from one of the large custom-houses. Details are not confined to the Treasury Department. No Government could be efficiently run if its officers were like serfs rooted to the soil.

"It is a well-established principle that statutes containing grants of power shall be construed so as to include the authority to do all things necessary to accomplish the object of the grant, and to enable the donee of the power to effect the purpose of the act." (*The Mayor* v. *Sands*, 105 N. Y., 210, 218.)

The reasons for the present detail do not appear in the record. They may, however, have been connected with the complaints, then very loud and notorious, that the polariscopists at New York were so much more "liberal" toward importers that it was having the effect of transferring the whole sugar importing business of Boston to the metropolis. (See Senate Report on Undervaluations, No. 1990, 49th Cong., 2nd sess., pp. 104–108, 131–136.)

VI.

Even if the Secretary of the Treasury made a mistake when he thought he could detail officers from Boston to New York to supply a pressure of work, or fill a temporary deficiency in trained expert service, or to ascertain the reason for the comparative undervaluation of sugars at New York, or for what other reason he may have acted—even if he made a mistake in omitting a new appointment, or in not requiring a new oath, still Messrs. Leary and Soule were *de facto* officers. They were acting as polariscopists in New York, whether or not a detail was sufficient to give them a *de jure* standing there. (See *Norton* v. *Shelby County*, 118 U. S., 425, 446; *Cocke* v. *Halsey*, 16 Pet., 71; *Lyons* v. *Woods*, 153 U. S., 649, 669; *Ball* v. *United States*, 140 U. S., 118; *Vaccari* v. *Maxwell*, 3 Blatchf., 368; *in re Ah Lee*, 6 Sawy., 410; *Matter of Kendall*, 85 N. Y., 302, 305.)

VII.

No other objections to the protest are supported by any evidence. There is no statutory requirement as to where or how the certification of "the so-called appraisement" should be made. It was an eminently fair system, by which the ownership of the sugar was kept secret from the polariscopist, and his finding was reported to an examiner instead of certified directly upon the original papers.

It is respectfully submitted that the judgment should be affirmed.

EDWARD B. WHITNEY,
Assistant Attorney General.

59-255

C. G. Burgoyne's Printing Business, 146-150 Custom House Place, Phila.

LAW ASSOCIATION OF PHILADELPHIA

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JAMES H. McKENNEY,
CLERK.

Supreme Court of the United States.

OCTOBER TERM, 1894.

No. 243. HAVEMEYER, ETC. v. MAGONE, ETC.

Plaintiffs' hasty notes of reply.

I.

The late hour at which galley-proof of the Government brief comes to hand permits only the hastiest memorandum notes of reply, without reference to pages.

Defendant's object in stating the amount demanded in the complaint, instead of that ascertained by the custom-house liquidating clerk (Rec. 21, fol. 40) must be to magnify the amount at issue. We have had no opportunity of seeing our friend's brief in No. 232, submitted last week, where the sum involved was seventy cents; so we are not informed of the precise amount which he would fix upon, as requiring the determination of a cause strictly according to the law applied to the facts. The larger the sum, it is true, the heavier the burden upon the tax-payer.

The sugars in question did *not* "*represent* different plantations"; nor were they "*in this respect* distinguished by plantation marks"; nor are the facts at all like those of the tobacco case, in *any* respect. The

sugars came "from different plantations"; but the marks were solely to indicate ownership, and not origin, except as the latter indicated the former.

This is *not* mere verbal criticism. It is a remonstrance against the assumption that the character (average or other) of a foreign plantation has aught to do with that portion of its products which chances to be brought here in a particular ship; and the assumption that these shipments are to be either compounded, averaged, or regarded as having any community of characteristics at our custom-houses.

II.

The Attorney-General disposes of our objection to the mixing of the samples by substituting asterisks, in his quotation from our protests, for the specific reference they make to R. S. sec. 2915.

The idea of requiring designation and examination by *packages*, as these are indicated upon the invoice, is (in part) that each importer may know with what amount of duty each package, in which he buys and sells the importation, is burdened;—and is entirely to preserve the relation between the package and its duty. This purpose is not subserved by any *averaging* of the shipment of the products of any one plantation, factory, town, or country.

III.

The probability that any crop, or product, from one side of a fence, or boundary line, will differ from that upon the other side is certainly no greater than there

will be differences in different parts of the same mine, farm, or plantation. That John Smith, or Castro de Leon, owned it all in Sagua le Grande, or Barbadoes, has nothing to do with duties payable here.

The pressure of business (if not the meagreness of the dock facilities at New-York and Brooklyn—where these sugars were unladen—Rec. 11, first word) has been heretofore presented as an argument for disregarding the law, and fully answered by this court, in Greely v. Thompson, 10 How. 239 and 240. Further, all *necessary* officers could be appointed; and none others could act.

The origin and context of sec. 2939 shows it was not intended to diminish the obligation of the *collector*, as imposed by sec. 2901, and other provisions; but to allow the *Secretary* to direct the examination, at that one port, of less than one-tenth of the packages "of every invoice."

Sec. 2914 simply refers to the *selection* of the Dutch Standard of color, with which all sugar importations are to be compared.

Sec. 2915 requires a *fair* taking, "by the proper officers," of the samples that are to be so compared.

IV.

Our contention—whether our opponents choose to characterize it as "main" or subordinate—is *not* that we were entitled to have our sugars examined by "an 'examiner,' technically so called";—but that we *were* entitled to have the heavy tax laid upon our merchandize ascertained by officers whom the law created and designated for that purpose. That Messrs. Leary and Soule held commissions in Boston (valid or void) is of no consequence. The material point is that they had

no authority to act in New-York, whether *called* 'examiners,' 'polariscopists,' 'chemist in charge' or any other fancy designation.

Whatever called, Mr. Leary in *fact* supplanted the lawful appraiser.

V.

Whether or not there have been other 'details,' questioned or unchallenged, is a matter not known to us, nor known upon this record. It is immaterial, anyhow. "More than two hundred men," said the steward of a river-steamer, "have wiped upon that towel, and you are the first man that has grumbled."

Boyd was the first man that contested here a power, exercised under *express* legislative authority for twenty years, and sustained in several circuits; yet he was at once declared justified in his objection. (116 U. S. 635.) So, of a provision found in the Statutes of Maine from 1824 to 1880. (71 Me. 251.)

Welsh may have been the first man to complain that his sugars were subjected to a polariscopic test, which the law did not require. (104 U. S. 699.) Jones may have been first to protest against paying duty on cattle not of so fine a stock as to suit the fancy of the customs-officers. (106 U. S. 466.)

If the reasons which the Attorney-General conjectures for this so-called 'detail' were the actuating ones, then it can easily be seen that we had a right to protest against men being called in from Boston expressly to mark up our sugars higher than the proper and sworn officers in New-York would have done; whether to retain the commerce of Boston, or from any other motive!

If the customs-officers of New-York fail of their duty, they certainly should be discharged, and others

who will do it appointed; but they cannot retain their office, and have its functions performed by unauthorized persons.

VI.

It is sufficient to repeat that no decided case shows Messrs. Leary and Soule to come within *any* recognized definition of a *de facto* officer; if that doctrine can apply to our right to notify a collector and Secretary of an illegality.

EDWIN B. SMITH,
120 Broadway,
New York,
plaintiff's counsel.